Center for Children & the Courts

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Welcome to the January 2000 edition of *The Center for Children and the Courts Newsletter*. The newsletter is published by the Center for Children and the Courts ("the Center"), located at the Judicial Council of California, Administrative Office of the Courts, in San Francisco. The mission of the Center is to maximize the effectiveness of court services for children and families, implement innovative court-related programs for recipients of juvenile and family court services, and promote those services in the legal community and to the public. The Center works closely with the Judicial Council's Advisory Committee on Family and Juvenile Law.

This edition of the newsletter includes articles from various Court Improvement Grant recipients, summaries of recent case law affecting children and families, and up-to-date changes in court rules, forms, legislation, and case law. We hope you'll find it both stimulating and informative.

Court Improvement Grant Recipients

EDUCATIONAL ADVOCACY PROJECT

Larry Lehner, Ph.D.
Chief, Family and Children's Services Bureau
Superior Court of Alameda County

In 1975 Congress enacted the Individuals and Disabilities Education Act, which guarantees all children—including children with diagnosed special education needs—a "free and appropriate public education." The act requires schools to develop an Individualized Educational Plan (IEP) for each special-needs child and provide an appropriate educational program.

The primary goal of the Educational Advocacy Project, funded by the Court Improvement Project, is to ensure that the educational needs of all children who become dependents of the Alameda County juvenile courts are met in a timely manner in accordance with federal and state laws.

But meeting the educational needs of court-dependent children is highly complex and time consuming due to a number of factors endemic to the dependency process and the public educational system. Approximately 27 percent of court-dependent children in Alameda County are receiving special educational assistance, while another 15 percent are either awaiting their first assessments or have been identified as requiring assessment of their special educational needs.

The Educational Advocacy Project provides individual advocates to serve as official educational representatives or surrogates for court-dependent minors needing the development of Individualized Educational Plans. The order for appointment of a special advocate can be generated upon the court's own motion or at the request of counsel, a social worker, a CASA volunteer, the child's foster or biological parent, or another interested party. A copy of the order is served on the appropriate school official, including legal counsel for the school district. The advocate will then intervene on behalf of the child to work with the school district, the parents, the social worker, and other persons associated with the specific case to see that the school assesses the child's educational needs, develops an IEP, and provides an appropriate free educational program.

In addition to individual advocacy, staff from the Educational Advocacy Project provides training programs for social workers, foster parents, attorneys, CASA volunteers, and biological parents to better acquaint them with federal and state statutes concerning the rights of special-needs children. The program's purpose is to prepare primary caretakers of court-dependent children to become more active and informed advocates of the special-needs children under their care.

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Educational Advocacy Project

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The Superior Court of Alameda County contracted with Parents Helping Parents, a private advocacy program, to provide staffing services for the project.

To date, 88 children have been served by the Educational Advocacy Project, and another 50 to 60 will be served by the end of the grant cycle. The results of the project are under analysis and will be made available to interested parties upon request.

FAMILY GROUP DECISION MAKING IN LOS ANGELES COUNTY

Wendy Aron
Research Attorney, Los Angeles Superior Court Juvenile Division

Thanks to a Judicial Council Court Improvement Grant, Los Angeles County developed and implemented a Family Group Decision Making (FGDM) pilot project in Fall 1998. FGDM is a problem-solving tool based on the simple, traditional belief that the combination of family strengths and community support can keep children safe and well cared for. FGDM is a conference of family members, friends, community specialists, and other interested parties who create a plan for the care and protection of a specific child or children.

THE FGDM PROCESS IN LOS ANGELES COUNTY

The conference is conducted in three phases. In Phase I the facilitator, the family, and professionals agree on the purpose of the conference. They identify the family's strengths and discuss issues and concerns related to the child's safety. The social worker and/or other professionals inform the family of the resources available from the Department of Children and Family Services (DCFS) and community-based organizations to help meet the family's needs. Finally, the social worker discusses DCFS and the court's expectations for the plan to be developed by the family.

During Phase II the family meets alone to discuss the issues raised during the first phase and to create a plan for the child's care and protection. The social worker and the facilitator remain available to respond to the family's questions during this phase.

The family presents the plan to the facilitator and social worker in Phase III. The social worker may accept or reject the plan. The facilitator, family, and social worker discuss how to implement the plan and identify resources within the family, DCFS, and community-based organizations that can assist in implementing the plan.

A written record of the conference is mailed to all parties in attendance. The social worker submits the case plan to the court if its implementation requires a change to the current court order.

THE FGDM OVERSIGHT COMMITTEE

The FGDM Oversight Committee creates policy and procedures for the operation and development of FGDM. The Oversight Committee is headed by the supervising judge of the dependency court and consists of representatives from DCFS, Dependency Court Legal Services, Court Appointed Special Advocates, Dependency Court Mediation, county counsel, Los Angeles County Department of Mental Health, Los Angeles County Board of Supervisors, Commission for Children and Families, and community service providers.

DATA COLLECTION AND EVALUATION

California State University, Los Angeles, has developed and distributed a survey of children, families, and social workers and is now conducting an evaluation of the FGDM pilot to determine the project's outcomes and improve the FGDM process. The response from participating families and social workers has been extremely positive.

EXPANSION OF FGDM COUNTYWIDE

The Oversight Committee is currently drafting a proposal to expand FGDM countywide. The first phase of expansion includes the creation of an FGDM Institute to develop and maintain standards and provide training; in addition, two FGDM facilitators and one assistant facilitator in each of the DCFS regional offices will be hired. The Oversight Committee's long-term goals are to expand the FGDM Institute and adapt the FGDM model to other government and community agencies, such as mental health agencies, schools, and juvenile probation.

KERN COUNTY DEPENDENCY COURT MEDIATION PROGRAM

Hon. Peter A. Warmerdam
Referee, Kern County Superior Court

I first heard of the "mediation craze" about four years ago. It struck me as another "touchy-feely" program being pushed by the large, liberal, and wealthy counties; it certainly was not meant for Kern County. I tried to forget the word "mediation," but it kept coming up at conferences and in dependency literature. Mediation would not leave me alone.

Two years ago I heard the "guru" of mediation, Megan Orlando, speak, and I became a convert, or at least someone wanting to believe. Not only did the promised savings in court time appeal to me, but the idea of parents who felt empowered, who did not feel like enemies of the system, who bought into and more willingly participated in reunification services, and who were more likely

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Kern County Dependency Court
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to successfully reunify with their children also gave me new hope that our efforts could be more successful.

After my newfound zealotry won over the other members of the court, we began the search to find funds for our mediation program. That search lead to a successful grant application to the Judicial Council.

We assembled an oversight committee of interested and enthusiastic individuals representing the various participants in juvenile court. Combining their input with the information gleaned from observing several operating mediation programs lead to the basic format of a program that we felt would fit our court and its needs.

The birth of our program has not been without problems, but they have been minor for the most part. Although the recalcitrance of the Department of Social Services and its attorneys was an initial stumbling block, my lack of foresight has been the latest problem. Since a slow start, the program has gained momentum. More cases and more types of issues are being referred to the mediator, and more and better resolutions are being produced. The program is well received by parents and their attorneys and is beginning to be seen as a means of empowering social workers to use their creativity to address the problems of these families.

We have not yet met our goals for the number of cases referred to mediation and the number of cases resolved by mediation, but we are making steady progress toward them. Mediation is proving to be a success in Kern County, and it is here to stay.

KINSHIP ADOPTION PROGRAM

Cecilia Camacho
Mediator

In Riverside County, relatives are increasingly serving as foster parents, partly because there aren't enough suitable foster homes, but also because mental health professionals have recognized that when reunification is not possible, children recover better if they are able to maintain ties with their siblings and extended families. In addition to fostering an environment for improved recovery, relatives as foster or adoptive parents in general tend to help the children maintain contact with their birth parents even after adoption.

The apparent benefits and increased usage of kinship adoption have resulted in a desire to offer a formal alternative to the adversarial court process of terminating parental rights. In 1998, the Superior Court of Riverside County was awarded a Judicial Council Court Improvement Grant to develop a Kinship Adoption Mediation Program. The program's overall intent was to provide a forum in which families could participate in creating a kinship adoption agreement. The agreement would be formed through premediation and cooperative planning rather than negotiation, thereby helping birth parents develop realistic expectations about their roles in the child's life and educating them about the irreversibility of adoption, no matter what the outcome of mediation.

The necessary framework for Riverside's program came from the "Teamwork for Children" model created by Jeanne Etter in Oregon. Teamwork for Children identified "premediation" (i.e., screening and early counseling) as an effective tool for families with moderate conflict; it also showed that in instances where voluntary relinquishment of the children is possible, parties may be able to bypass premediation services and go directly into mediation. Keeping these findings in mind, Riverside developed an interdisciplinary process in which the Department of Public Social Services (DPSS) provides premediation in applicable cases. Basically, Riverside's Kinship Adoption Program proposed to offer a two-path program: (1) a premediation path for families with moderate conflict; and (2) a direct path to mediation in instances where voluntary relinquishment of the children was possible.

Riverside's program works as follows: A referral by the judicial officer initiates the kinship adoption mediation after parental reunification services have been terminated (DPSS will generate future assessments and referrals by way of a 90-day postdispositional review as part of the concurrent planning process). The court completes a case referral form that is forwarded to the mediator along with the minute orders and the social worker's latest report. The mediator assesses the case with the assistance of the child's social worker and then schedules an introductory joint meeting with the prospective adoptive parents and the social worker and/or adoption worker. The purpose of this meeting is to explain the overall mediation process. If the prospective adoptive parents are receptive, the mediator will continue the work by meeting with the birth parents to engage them in the process.

Before finalizing the adoption, the judicial officer must make a finding regarding the kinship adoption agreement based on the evidence provided in the social worker's prefinalization report. The prefinalization report should affirm that the kinship adoption agreement meets the best interest of the child and should be accompanied by the agreement itself, which has been signed by the minor's attorney as well as by any minor who is age 12 or older. The original agreement is then retained by the prospective adoptive parents and attached to the AD-310 form, which is submitted with the other adoption papers and made a permanent part of the court records.

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Kinship Adoption Program
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Study of the program's effects continues; however, at the conclusion of this process in December we will review the data. We will analyze the program to determine if we met our outcome goal of decreasing the number of review hearings in these cases. Currently, 20 percent of our referrals result in written agreements, and we expect this number to increase.

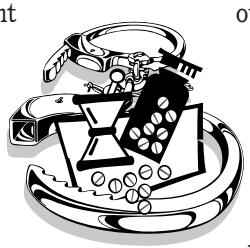
PLACER COUNTY DEPENDENCY DRUG COURT

Hon. Colleen Nichols
Superior Court of Placer County

In the 1990s, it became clear that substance abuse was a prominent factor in more than 80 percent of the dependency cases in Placer County. While treatment services are provided to parents, dependency reunification plans are generally reviewed only every three to six months. Therefore, the court has had limited ability to hold parents accountable for their sobriety. Yet it is well recognized in the drug treatment community that addicts must be confronted by immediate consequences if they are to move toward sobriety. To alleviate some of the time delays, Placer County Juvenile Court developed a drug court specifically for the parents of dependent children. The court received a one-year grant of $75,000 from the Judicial Council's Court Improvement Project for this project.

The Dependency Drug Court (DDC) is a voluntary, one-year intensive treatment program modeled after our very successful criminal drug court. Its purpose is to provide immediate substance abuse assessment and the requisite level of treatment to the parents of children who are dependents of the court. The parents participating in DDC are closely monitored, and the consequences of failure to comply occur within two weeks, rather than at the next six-month review. With intensive treatment and immediate accountability of the parent's sobriety, families can be reunified faster and more safely for the children. Since the program is still in its infancy, the statistics cannot yet be compiled; however, most of the parents in the program have been reunified with their children within three months of starting intensive drug treatment. One parent is in residential treatment without her teenage daughter. As the program grows, more data on outcomes will be collected.

The DDC program will save the county substantial amounts of money. The county is already obligated to provide drug treatment to parents as part of family reunification. The program's premise is that immediate response to the treatment needs of the parents will reduce the average amount of time children will spend in foster care to approximately three months. Clearly, the resulting savings in foster care outweigh any increased cost for intensive substance abuse treatment.



Children are frequently detained when their parents are arrested for being under the influence of drugs or for possession of controlled substances as provided in Health and Safety Code sections 11377 and 11550. The criminal court process can take up to six months. Meanwhile, the dependency case is at the six-month review and the parents are at a point of reunification. Reunification is sometimes delayed when the parents face a jail sentence or an alternative sentencing program. To speed up the process, we have integrated our criminal and dependency drug courts so parents with pending criminal drug charges can have both issues handled by the same court. The district attorney has agreed to expedite the evaluation and filing of criminal complaints for parents interested in DDC. The parents must be otherwise eligible for adult drug court in order to participate in the combined program. At completion of the 12-month program, their criminal charges are dismissed or the sentence completed, and if all went well, they have reunited with their children.

The DDC is heard every two weeks. DDC staff assesses the participants to determine the level of their treatment needs. Each participant is then required to attend group treatment and any required self-help meetings and to appear in court every two weeks. The DDC case manager receives reports from treatment providers on each participant's progress.

A series of sanctions and promotions is given to the participant before he or she signs the drug court contract. Participants are tested twice a week at the initial stage. Swift sanctions follow positive tests, missed treatment, or other program violations. For those parents with criminal charges being handled in DDC, sanctions are graduated at 3, 5, 7, and 14 days in jail for positive tests (after the first positive, which is handled as a treatment issue). For those who do not have combined criminal charges, sanctions are handled under civil contempt proceedings, with up to 5 days for each positive test. For both groups, missing treatments adds two self-help meetings per week for two weeks. So far, the participants have admitted the positive tests and accepted the consequences/sanctions without the necessity of a contempt hearing.

Getting an agreement with the district attorney to include the criminal charges was a major hurdle. Fortunately, the same bench officer hears the DDC as well as the adult criminal and juvenile drug courts. Now that the wrinkles have been ironed out, we are looking forward to expanding our program.

SAN DIEGO COUNTY DEPENDENCY COURT RECOVERY PROJECT

Andrea Murphy
Project Manager, Superior Court of San Diego County

The Dependency Court Recovery Project emphasizes compliance with statutory timelines for decision making in all dependency cases, as traditionally the court as a whole has had difficulty making timely placement decisions for children. Several proposals have been made to accomplish this objective. The court reform proposals include specific options to address alcohol and drug abuse concerns as well as general court reform measures. The Court Improvement Project funds a pilot study to make Family Group Conferences (FGCs) an integral part of the dependency process.

The use of FGCs recognizes the value of allowing families to participate in the decision-making process concerning the protection and safety of their children. The family decision-making process involves not only the parents, but also members of the extended family (e.g., grandparents, aunts, uncles, and cousins) and those the family considers support or resource people (e.g., neighbors, clergy, and tribal elders). Based on a model established in New Zealand, the FGC model allows family members to meet privately (in "family unity meetings"), formulate their plan, and present it to the agency. This approach capitalizes on family strengths and allows an expression of culturally appropriate processes and solutions, while actively engaging the family in supporting and sharing in responsibility for vulnerable children.

In March 1999, the pilot project began operations in three of the seven dependency courts in San Diego. The emphasis was on using family unity meetings early in the dependency process. Traditionally, FGCs have not been used until the late stages of the dependency process. Three project objectives are defined:

1. To explore the feasibility of the family unity meetings as a major component of the dependency court process;

2. To lessen or eliminate the need for court/government involvement through strengthening of the families' support systems by:

- increasing the number of children cared for by relatives,
- reducing foster care costs, and
- assessing cost savings through the use of alternative family resources;

3. To conduct a minimum of 30 family unity meetings during the year.

Although the results of the project are unknown at the moment of this writing, the data are being analyzed and a final report on project outcomes will be prepared in January 2000.

SISKIYOU COUNTY FAMILY ALTERNATIVES & MEDIATION PROJECT

Hon. Charles Henry
Superior Court of Siskiyou County

Siskiyou County, California's northernmost county, is an agricultural area of 6,500 square miles with a population of only 44,000. Native Americans represent 9 percent of that population but approximately 18 percent of the court's dependency caseload. The Karuk Tribe has 3,000 enrolled members, making it one of the largest indigenous tribes in northern California. There are also significant populations of Quartz Valley, Shasta, Hoopa, Yurok, and Pitt River tribal members.

Although the Indian Child Welfare Act (ICWA) was passed by Congress in 1978, it was not until the 1995 adoption of rule 1439 of the California Rules of Court that the Superior Court of Siskiyou County took a proactive stance to comply with the notice requirements of the act and rule 1439(f). Within a short time, the appearance of tribal representatives at court proceedings increased dramatically. The juvenile court judge and other court participants began a regular dialogue with tribal representatives during recesses and at the quarterly lunch meetings that the judge hosted for all juvenile court participants.

As a result of this initial communication, the judge invited the Karuk Tribe's director of social services to be one of Siskiyou County's team members at Beyond the Bench IX in December 1997. The team identified ICWA compliance as a high-priority concern and the development of either family conferencing or mediation as one of its top three issues. Both the judge and the supervisor of caseworkers for Child Protective Services (CPS) had attended family conferencing and mediation training in Santa Clara County only the month before and were struck by the applicability of models that included the child's extended family members to Native American cultural concepts.

In Summer 1998, Judge Charles Henry wrote a grant application to the Judicial Council to fund development of the Family Alternatives and Mediation (FAM) model. The grant was awarded in December 1998. The model was unique not only because it brought family conferencing and mediation to a significant tribal population in a rural setting, but also because it extended the cooperation and collaboration that the court and the Karuk Tribe had been developing since 1995. The two-person mediation teams consisted of a court employee and a tribal employee who mediated all cases together whether or not ICWA applied.

The result was even greater collaborative efforts between the tribe and the court. In September 1998, the Karuk Tribe invited the Superior Court to present a program at the fifth annual Tribal ICWA Conference in Kelseyville, California. In Summer 1998, the court first utilized tribally approved foster families

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Siskiyou County Family Alternatives
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for Indian child placements. A tribal representative again attended Beyond the Bench in December 1998. The tribe and the court cooperated in a supervised visitation program for dependency, family law, and guardianships commencing in August 1999. In the same month the tribe began a cooperative project on delinquency dispositions with the Siskiyou County probation department. And, most recently, a mini-grant was received from the Judicial Council along with matching funding from the Karuk Tribe and Siskiyou County CPS to host a three-day ICWA training workshop in Siskiyou County from November 2 to 4, 1999.

In the meantime, numerous cases have been settled locally after referral to FAM. In every case in which settlement has not been reached, the issues have been narrowed significantly. In one typical case, a scheduled three-day contested hearing was reduced to 30 minutes. Both tribal representatives and the court are excited by the results, by the intimate tribal involvement in the process, and by future opportunities for collaborative projects.

SONOMA COUNTY FAMILY GROUP CONFERENCING & ORIENTATION PROJECT

Hon. Arnold D. Rosenfield
Superior Court of Sonoma County

The Sonoma County juvenile court, the Department of Human Services, and Jewish Family and Children Services (JFCS), a community-based organization, have joined forces to offer an orientation program to parents of children entering the dependency system and an option to participate in family group conferencing.

During orientation, staff at JFCS, trained in the intricacies of the dependency system by court staff and the Department of Human Services, explain the timelines, procedures, and roles of the players in the court process. Time is allotted in the two-hour session to allow the parents to ask questions. Road maps of the court process and resource information are made available. Attempts are made to have people attend a session within a week of their child's detention hearing. In reality, most get there within two to four weeks after detention. There have been about 30 referrals with about an 80 percent attendance rate. It should be noted that the department's filing rate has been very low over the past few months.

An additional goal of the orientation session is to secure information about the child, such as relatives who may be available to take the child or, if applicable, affiliated tribes that should be notified. The information is passed along to attorneys and social workers. This information-gathering process is successful because parents are more willing to discuss issues with a person from outside the court system. Because concurrent planning is required and information gathering is crucial to it, the orientation process is also used to attempt to acquire the information necessary to effectively deal with concurrent planning issues.

Conversations with attorneys and social workers have disclosed that parents who have attended the orientation program gain a better grasp of their responsibilities and show more willingness to begin the reunification plan because they understand the time constraints involved.

To begin the family group counseling program, Jim Nice of Coos Bay, Oregon, held a training session with representatives of the Department of Human Services and other interested agencies. Each week, JFCS facilitators and social workers have drop-in sessions to identify and prepare cases for family group conferences. About 15 family group conferences have been held to date, and all appear to have gone smoothly. Follow-up interviews with families are presently under way.

An internal newsletter keeps issues "out front" and discusses the benefits of family group conferencing. A social worker assigned to deal with concurrent planning issues has been instrumental in identifying cases and getting them to family group conferencing. She recently has taken a more active role, so the stream of cases going into family group conferencing is on the rise.

On October 21 and 22, Pat Evans, of the Family Group Conference Institute in Santa Clara County, teamed up with Jim Nice to teach an advanced training seminar in order to more fully weave family group conferencing into the fabric of social workers' experiential techniques here in Sonoma County.

The goal of the orientation program is to give parents some much-needed help in understanding the court process so their attempt to reunify with their children will be more meaningful. At present, it is unclear how these families will perform in contrast with those who don't undergo the orientation process. Not enough time has passed to allow us to determine success and failure rates. Nevertheless, the program clearly has yielded helpful information regarding these families, which has made for more informed decision making.

Family group conferencing has germinated in Sonoma County. Assurances have been forthcoming that it will continue to grow thanks to funding through a Judicial Council grant. The Department of Human Services is committed to keeping a family group conference capability in place and looks forward to expanding it into other arenas, including protective services. ■

Child Support and the Implications for Juvenile Court Cases

Hon. Margaret S. Johnson
Superior Court of Santa Clara County

For many years the various departments of our courts concerned with children have operated separately, controlled by different sets of laws.[1] Although efforts have been made to coordinate services and exchange information between the divisions of the court,[2] they have still, by and large, remained separate.

Juvenile courts in California have concerned themselves with the welfare of children and, by legislative mandate, have been limited to issues involving the jurisdiction of the court and the placement of the children.[3] They have not generally been concerned with either the costs of placements or the reimbursement of those costs.[4] Family courts have concerned themselves with the custody of children between their parents and concurrently ordered child support to be paid to the custodial parent by the noncustodial parent. Now, with the growth of child support services mandated by federal and state law and the increase of child support commissioners' departments, child support has become universal and is fast becoming the issue that will link the branches of the court. This article addresses some of the child support issues that now affect our juvenile courts.

For many years the district attorney family support divisions (DA/FSDs) around the state have collected child support from noncustodial parents and paid that money either to the custodial parent or reimbursed the county for the welfare funds expended on behalf of the child.[5] The obligation to support their children applies to all parents no matter where their children are residing, but it is only in recent years that it has been consistently applied to the parents of dependent and delinquent children. The obligation to pursue these parents is discretionary pursuant to Welfare and Institutions Code section 903.4(c)(4), but with the advent of Assembly Bill 1058[6] and welfare reform,[7] most DA/FSD offices believe they are now required to set and collect child support for all children receiving welfare benefits.[8]

The juvenile court generally makes placements based upon the needs of the child without consideration of the cost or funding available. Understanding the funding system is made more difficult because of the variety of sources providing funding. Some facilities, including children's shelters, juvenile hall, and county ranch facilities, are paid for with county funds. Foster homes, group homes, relative placements, community care facilities, therapeutic treatment facilities, and out-of-state placements are most often financed by welfare funds paid for the support of each child.[9] Social Security may pay support for disabled children.

In all juvenile court dependency or delinquency cases where a child is given a welfare-funded placement, a DA/FSD child support action is automatically triggered. Placement of the child in a county-funded facility initiates a payment responsibility executed by a county financial officer.[10] In many cases a child may have spent time in both of these categories of placement and both of these financial systems will be triggered. Having this dual system of responsibility for payment as well as little available information about financial responsibility has resulted in a significant and mostly confused body of litigants—many of whom appear in the child support commissioner's departments anywhere from six months to a few years after the children are placed outside their homes. These litigants are understandably upset about the costs that they now have to reimburse. Most of these people claim to have never been previously informed that their child's placement would be a cost to them.

In Santa Clara County, all the people involved in the various steps of the juvenile/child support systems have been meeting to try to educate one another about the functions that they fulfill, as well as to try to create some solutions.[11]

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1. Fam. Code, Welf. & Inst. Code, Prob. Code.

2. See, e.g., Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases,* Santa Clara L. Rev. 27 (1987): 201.

3. Welf. & Inst. Code, § 903.45.

4. Except as set forth in Welf. & Inst. Code, § 903.45.

5. Family support divisions collect child support to reimburse the county for welfare payments for children (Fam. Code, § 17402 [formerly Welf. & Inst. Code, § 11350]) as well as on behalf of custodial parents not receiving aid (Fam. Code, § 17404 [formerly Welf. & Inst. Code, § 11350.1]). See also Fam. Code, § 17400 (formerly Welf. & Inst. Code, § 11475.1).

6. In 1996, Assem. Bill 1058 enacted major changes to the DA child support system, mandated the current system of child support commissioners, and changed many of the procedures for the establishment and enforcement of child support. Assem. Bill 1058 also created the office of the family law facilitator in each county, which provides education, information, and assistance to litigants with child support, spousal support, and health insurance issues.

7. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105.

8. Welf. & Inst. Code, § 11350 mandates this collection.

9. These funds can include a combination of federal and state welfare funds.

10. See Welf & Inst. Code, § 903.45.

11. The group includes child support commissioners, juvenile court judicial officers,

Child Support

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That group has identified some of the problems that exist in our current system:

◆ The juvenile court judicial officer does not usually know when a child's placement is made or changed or which funding source is used for the placement.

◆ The professionals involved with the parents[12] do not understand the child support system and do not discuss it with their clients.

◆ Notices given to the parents are inadequate, hidden in the large amounts of other paperwork they receive.

◆ The parents, particularly those involved in dependency proceedings, often have problems like drug addiction, mental illness, or incarceration that affect their ability to cope with financial issues.

◆ The process of setting up a case, even with an expedited system, still takes at least a few months, in the course of which an arrearage develops. Therefore, the parents are often faced with debt at the time that the children are returning to their care, resulting in a financial crisis for the family. In other cases, it means that a parent can no longer be located by the time the DA/FSD action is commenced.

◆ Many parents do not recognize, or choose to ignore, communications from the DA support officers, with the result that a default judgment is ordered by the court. This result will probably maximize the parent's liability.[13] The ability of the court to set aside these default judgments is limited after significant time has passed.[14]

◆ The county system of collection, usually the county revenue department, (more common in delinquency than dependency cases) is faster and more familiar to the juvenile court. It also operates separately from the DA/FSD and on a different statutory scheme. Parents often believe that, because they have paid the bill for juvenile hall or for public defender services, they do not have any further obligation. They certainly are not expecting another order from the child support commissioner's court.

◆ In delinquency court, the court is not required to determine parentage of the child, although it has the ability to do so.[15] Thus, it is not always the legally responsible parties who know about the delinquency proceeding, and the child support system still has to identity legally responsible parties.

◆ The previous custodial parent may believe that the other parent is solely responsible for the payment of child support pursuant to an existing court order. While this may be true, once the child is removed from the previous custodial parent, that parent also becomes liable.

Many positive results have come from the meetings over the past year. Clearly, the greatest benefit has been that participants understand the roles of the other agencies involved in the system and are now able to ask questions and coordinate services. Other initiatives that we have taken and continue to take are these:

◆ The creation of a brochure, written in clear and simple English and planned to be translated into Spanish and other languages, to be used by professionals in juvenile court to explain the child support system to parents. The brochure is published by the family law facilitator's office and explains and encourages the use of the facilitator's office in filing an Answer to the Complaint.

◆ Training of social workers, attorneys , and probation officers in the child support system by the child support commissioners and the family law facilitator.

◆ Development of cooperation between the district attorney's family support division and the family law facilitator's office to expedite cases in which the parent is receiving assistance from the facilitator's office.

◆ Establishing a commitment by the child support commissioners to work with the juvenile court when setting child support to consider any reunification or treatment programs that the parents may be involved in. The child support commissioners are knowledgeable about employment services in the community and will work with the juvenile courts to coordinate employment services in any service contract entered into in juvenile court.

◆ Referral to the district attorney's child support division by juvenile court workers when a parent has, or will receive, custody of a child and is not already receiving child support from the other parent. Referrals in exit orders made by the juvenile court are included in this category.

◆ Review of juvenile court placement orders so that they can be revised to include, wherever possible, notice to the parents of their duty to support their children and to reimburse welfare payments (as well as other county expenses).

Our continuing goals are to streamline child support services in juvenile court cases to provide better and more comprehensive services to our litigants, to make support of children a current

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DA family support attorney supervisors, social services representatives from both the fiscal unit and the dependency services unit, juvenile court district attorneys, county counsel, public defenders, private counsel, and the family law facilitator.

12. These include social workers, attorneys from the public and private sectors, and probation officers.

13. In a default situation the judgment will be automatically entered for the minimum basic standard of adequate care. (Welf. & Inst. Code, § 11452.) The amount set for child support varies depending upon the number of children, but effective July 1, 1999, it is, for example, $390 per month for one child and $793 per month for three children.

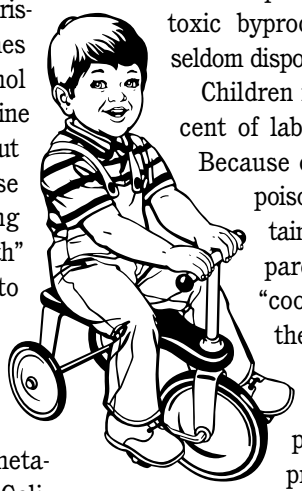
14. The situation for parents with arrears and default judgments will be somewhat improved but not eliminated by the passage of Sen. Bill 380, which, among other things, limits reimbursement to one year prior to the filing of the complaint (it was formerly three years prior).

15. Welf. & Inst. Code, § 903.41.

The Drug Endangered Children Resource Center

Kathleen West
Project Director

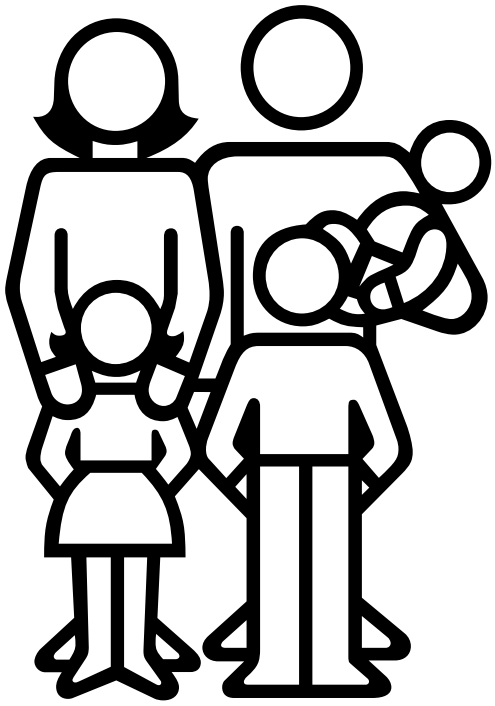
As is the case throughout the United States, as many as 90 percent of the children under court jurisdiction in California are from homes affected by substance abuse. Alcohol is ubiquitous, marijuana and cocaine are still high-frequency problems, but methamphetamine abuse is on the rise and is now ranked as the leading illicit drug throughout the state. "Meth" (a.k.a. "crank") is relatively easy to make and increasingly made in unsafe home-based "labs." In fact, the growing problem of home-based methamphetamine labs is rivaling the problem of methamphetamine abuse itself in many parts of California and the western region of the United States. Whereas methamphetamine was once primarily made in desert or rural areas, clandestine labs are now found in urban and suburban settings as well and in every California county. About one in six labs is found through an explosion or a fire, and for every pound of "meth" produced, five pounds of toxic byproduct is generated and seldom disposed of properly.



Children reside in about 35 percent of labs seized in California. Because of the multiple deaths, poisonings, and injuries sustained by children whose parents or caregivers are "cookers," concerns about the welfare of children are now linked to the methamphetamine problem. With meth production ruled to be an "inherently dangerous felony" by the Ninth Circuit Court of Appeals (1998), prosecutors are increasingly filing Penal Code section 273(a) charges in addition to Welfare and Institutions Code section 300 filings. But these cases may require more time and calendar coordination among the various courts and do not lend themselves to easy answers from the dependency bench. In many counties, little or no "cleanup" of the meth lab homes is required, and re-inhabitation concerns loom large in the minds of environmental health practitioners responsible for following up on high-risk children residing in contaminated dwellings.

Since late 1997 the Drug Endangered Children (DEC) Resource Center, a project of the California Women's Commission on Addictions (CWCA), funded by the California Office of Criminal Justice Planning, Children's Branch, has begun to address the problem of children and communities endangered by meth labs by assisting in the development of county-based multidisciplinary DEC response teams and workgroups throughout California. The DEC Resource Center is facilitating the development of a child-focused, multisystem coordinated response to the emerging meth use/production epidemic by convening knowledgeable practitioners from law enforcement and child welfare, public health nurses, other medical practitioners, environmental health experts (including members of hazardous materials teams), mental health and treatment providers, judges, and prosecutors.

These practitioners, along with legislators and other policymakers, will be attending the regional meeting "Linking Methamphetamine With Child Endangerment: Building a Multi-Disciplinary Approach," to be held on May 23 and 24, 2000, in Sacramento, California. The meeting will focus on special multidisciplinary issues and ways to coordinate an effective response. It is expected to draw 500 participants from California and nearby states. For more information about the DEC Resource Center, teaching materials, protocols, and the May 2000 conference, please contact the DEC Web ste at www.cwcadd.org/DEC or call 800-529-2233 and ask for the DEC Resource Center. ■



Child Support
Continued from page 8

obligation payable while the children are not residing at home rather than a retroactive debt, and to increase the payment and receipt of child support. It is only through coordination and communication within and outside the court system that we will understand one another and improve our ability to serve our community and our children.[16] ■

16. Thanks to my colleagues Judge Mary Ann Grilli, Commissioner John G. Schroeder, and Facilitator Constance Jimenez, Superior Court of Santa Clara County, for their suggestions. My thanks also to Commissioner Terry Lee, Superior Court of Mono County, for feedback.

1999 Legislative Summary

During the first year of the 1999–2000 legislative session, the Legislature and Governor enacted some 85 bills that affect the courts and are of general interest to the legal community. Brief descriptions of those measures concerning issues related to children and families follow, arranged according to code section affected. Designators indicate whether the measure is of primary interest to judges and/or court administrators in trial courts (T) or appellate courts (A).

The effective date of legislation is January 1, 2000, unless otherwise noted. Urgency measures normally take effect upon enactment, and some measures have delayed operative dates. Those dates are included where applicable.

The bill descriptions are intended to serve only as a guide to identifying bills of interest; they are not a complete statement of statutory changes. Code section references are to the sections most directly affected by the bill; not all sections are cited.

Until the annual pocket parts are issued, bill texts can be examined in their chaptered form in *West's California Legislative Service* or *Deering's Legislative Service*, where they are published by chapter number.

Chaptered bills and legislative committee analyses can be accessed at www.leginfo.ca.gov/bilinfo.html on the Internet. Individual chapters also may be ordered directly from the Legislative Bill Room, State Capitol, Sacramento, CA 95814, 916-445-2323.

CODE OF CIVIL PROCEDURE

SEXUAL ABUSE: STATUTE OF LIMITATIONS T

SB 674 ORTIZ, CH. 120
CCP 340.1

Makes the current statute of limitations for childhood sexual abuse cases against third parties retroactive, but states that the bill is not intended to revive cases where there has been a final adjudication prior to January 1, 1999.

FAMILY CODE

FAMILY LAW: CHILD CUSTODY AND SUPPORT (OMNIBUS BILL) T

AB 1671 ASSEMBLY COMMITTEE ON JUDICIARY, CH. 980
FAM 126, 215, 243, 3011, 3020, 3021, 3046, 4065, 4508, 5000, 5001, 5002, 6341, 17400, 17523; R&T 19271.6, 19272, 19273; W&I 213.5, 11350.75, 18205

Makes several changes to child custody, child support, and domestic violence statutes of technical and conforming nature. Judicial Council cleanup provisions address clarification of terms, modification of paternity judgments, service requirements, and the court's authority to make support orders.

DOMESTIC VIOLENCE: PROTECTIVE AND RESTRAINING ORDERS T

AB 825 KEELEY, CH. 661
FAM 145, 6221, 6380, 6380.5, 6381, 6383; CCP 527.6, 527.8; PEN 136.2, 13701, 13711; W&I 213.5

Provides that only protective and restraining orders issued on forms adopted by the Judicial Council and approved by the Department of Justice may be transmitted to the statewide restraining order system. Renames the Domestic Violence Protective Order Registry as the Domestic Violence Restraining Order System. Provides that failure of a court to issue an order on a Judicial Council–approved form does not render the order unenforceable.

DOMESTIC PARTNERS T

AB 26 MIGDEN, CH. 588
FAM 297 ET SEQ.

Defines domestic partners and provides procedures for the registration and termination of domestic partnerships with the Secretary of State. Specifies domestic partner hospital visitation rights. Provides an option for state and local public employers to extend health benefits to domestic partners under the Public Employees' Medical and Hospital Care Act (PEMHCA).

INDIAN CHILD WELFARE ACT T

AB 65 DUCHENY, CH. 275
URGENCY, EFFECTIVE: 09-01-99
FAM 305.5, 7810; W&I 360.6

Directs the courts to strive to promote the stability and security of Indian tribes and families and to comply with the Indian Child Welfare Act in all Indian child custody proceedings. Requires that the federal act be applied in those proceedings if the tribe determines that a child is a member of the tribe or eligi-

ACKNOWLEDGMENTS

This excerpt from the "1999 Legislative Summary," a special edition of *Court News* published in November 1999, was prepared by the Administrative Office of the Courts, Office of Governmental Affairs, in cooperation with the Legislation Committees of the California Association of Clerks and Election Officials, the California Court Clerks and Superior Court Clerks Associations, and the California Association of Trial Court Administrators.

ble for membership. Requires state and local authorities to provide notice to the tribe of the removal of an Indian child from the custody of his or her parents within one working day if the tribe has assumed exclusive jurisdiction over child custody proceedings. Requires the state to transfer child custody proceedings to the tribe within 24 hours of being notified that the child is an Indian child.

DISSOLUTION OF MARRIAGE: ATTORNEY'S FEES T

SB 357 ORTIZ, CH. 118
FAM 2040

Provides that a party who uses community or quasi-community property to pay an attorney a retainer for fees and costs shall account to the community for the use of the property. Provides further that if one party uses the separate property of the other party, the one party must account to the other for the use of that property.

CHILD CUSTODY: REPORTS OF CHILD ABUSE, SUPERVISED VISITATION T

SB 792 ORTIZ, CH. 985
FAM 3027.5, 3201; W&I 827

Prohibits a parent from being denied custody or visitation for lawfully reporting suspected abuse. Authorizes the court to limit custody or visitation rights of a parent who willfully makes a false report of child abuse. Requires that court-ordered supervised visitation be conducted in accordance with standards adopted by the Judicial Council.

CHILD CUSTODY: REBUTTABLE PRESUMPTION T

AB 840 KUEHL, CH. 445
FAM 3044

Creates a rebuttable presumption against an award of sole or joint physical or legal custody of a child to a parent who has perpetrated domestic violence against the other parent within the past five years. Sets forth factors to overcome the presumption.

CHILD CUSTODY: EVALUATOR STANDARDS T

SB 433 JOHNSON, CH. 932
FAM 3110.5, 3111

Requires the Judicial Council to adopt a rule of court by January 1, 2002, that establishes training, education, and licensure requirements for court-connected and private child custody evaluators. After January 1, 2005, all private evaluators must have one of certain specified licenses, and court-connected evaluators must meet all qualifications established by the Judicial Council. Provides for exemption if the court finds that a qualified evaluator is not available to the court. Authorizes the court to appoint a child custody evaluator in contested custody proceedings.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT T

SB 668 SHER, CH. 867
FAM 3135, 3400 ET SEQ.

Renames the Uniform Child Custody Jurisdiction Act as the Uniform Child Custody Jurisdiction and Enforcement Act. Provides an exclusive jurisdictional basis for making an initial child custody determination and allows a court to assume temporary emergency jurisdiction in specified circumstances. Expands provisions relating to the enforcement of out-of-state child custody decrees. Requires the Judicial Council to report to the Legislature by January 1, 2003, on the effect of the implementation of this act.

SUPERVISED VISITATION AND EXCHANGE; PARENT EDUCATION; COUNSELING T

AB 673 HONDA, CH. 1004
FAM 3202, 3204

Permits the family law division of the superior court to establish and administer supervised visitation and exchange programs, parent education programs, and counseling programs for families. Requires the Judicial Council to submit annual applications for federal funding of these programs. Requires the Judicial Council to report to the Legislature on funded programs on March 1, 2002, and on the first day of March annually thereafter. Repeals the Friend of the Court Act.

SUPPORT ORDERS: MODIFICATION, SET ASIDE, ENFORCEMENT T

AB 380 WRIGHT, CH. 653
FAM 3652, 3653, 3654, 3690, 4009, 7575, 7642, 17212, 17400.5, 17401, 17402, 17433, 17521, 17530; PEN 166.5; W&I 11350

Authorizes the court to set aside all or part of a support order or a paternity order on the grounds of fraud, perjury, or lack of notice. Repeals prohibition against hardship deduction when child is receiving public assistance. Limits welfare reimbursement in cases brought by the district attorney to one year prior to the filing of the complaint. Provides that an initial support order may be made retroactive to the date of filing. If service is more than 90 days from the date of filing and the court finds that the obligor was not evading service, support may commence no earlier than the date of service. In cases brought by the district attorney in which defendant defaults, support commences on the first day of the month after complaint is filed. Gives the court discretion to determine whether and under what terms and conditions a child support obligee must repay the obligor any amounts previously paid in excess of a support order modified retroactively.

CHILD SUPPORT: FAMILY LAW FACILITATORS, VOLUNTARY PATERNITY, DEFAULT JUDGMENTS **T**

SB 240 SPEIER, CH. 652
FAM 3680.5, 5005, 7551.5, 7552.5, 7571, 7572, 7575, 10003, 10004, 10005, 10013, 10014, 10015, 17405, 17407, 17430, 17506, 17508, 17509, 17520; B&P 30; CCP 708.780

Permits family law facilitators to provide services on child custody and visitation issues if the court adopts local rules. Also provides that the family law facilitator shall not represent or have an attorney-client relationship with any party and that all communications between parties and a family law facilitator, or all persons employed by or working with the facilitator, are not privileged. Prohibits the family law facilitator from making public comments about individual cases pursuant to the Code of Judicial Ethics. Appropriates an additional $2.1 million for the family law facilitator program. Makes various amendments to voluntary declaration of paternity declaration statutes, including giving courts access to database. Amends default procedure to clarify that default is to be entered without further hearing or presentation of evidence.

SPOUSAL SUPPORT: CONSIDERATION OF EMOTIONAL DISTRESS **T**

AB 808 STROM-MARTIN, CH. 284
FAM 4320

Directs the family court, when ordering spousal support, to consider any emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party where the court finds documented evidence of a history of domestic violence.

SPOUSAL SUPPORT **T**

AB 391 JACKSON, CH. 846
FAM 4320, 4330

Grants courts the discretion to order a party to pay spousal support for a greater or lesser period of time than one-half the length of the marriage. Permits, but does not require, courts to issue an admonition ("Gavron warning") concerning reasonable efforts to become self-supporting.

ELDER OR DEPENDENT ADULTS: ABUSE: PROTECTIVE ORDERS **T**

AB 59 CEDILLO, CH. 561
FAM 6250–6252, 6380; W&I 15657.03

Sets forth procedures under which an elder or dependent adult who has suffered physical or emotional abuse may seek protective orders. Requires that protective orders to prevent elder abuse be entered in the domestic violence restraining order system. Requires the Judicial Council to promulgate forms, instructions, and rules of court.

DOMESTIC VIOLENCE: TRANSLATION OF FORMS, FIREARM RESTRICTIONS **T**

SB 218 SOLIS, CH. 662
FAM 6304, 6343, 6380.5, 6389; CCP 185; H&S 124251; PEN 166, 273D, 273.5, 273.6, 836, 1328, 11163.3, 11163.6, 12021, 12028.5

Authorizes the court to provide unofficial translations of domestic violence restraining order forms. Requires the Judicial Council to provide translation of domestic violence order forms as appropriate. Prohibits subject of a restraining order from owning, possessing, or purchasing a firearm and requires relinquishment of firearms. Exempts peace officers from this requirement. Enhances penalties for various violations of restraining orders. Authorizes the court with jurisdiction over a case to appoint a guardian ad litem to receive service of a subpoena of a child and power to produce the child. Authorizes disclosure by the domestic violence death review team of otherwise confidential or privileged information regarding the victim or any other information deemed relevant to members of that team.

MINORS: CONTRACTS **T**

SB 1162 BURTON, CH. 940
FAM 6752, 6753

Regulates the disposition of earnings of an unemancipated minor who is under a contract for artistic or creative services. Gives the court continuing jurisdiction over all approved contracts and trust funds until the account is terminated.

FAMILY LAW INFORMATION CENTERS **T**

SB 874 ESCUTIA, CH. 886
FAM 15010

Extends by one year the family law information center pilot projects in three counties. Requires the Judicial Council to select the courts in which the pilots will operate. Deletes the existing confidentiality provision and replaces it with a prohibition against public comments about individual cases pursuant to the Code of Judicial Ethics.

CHILD SUPPORT ENFORCEMENT REFORM **T**

SB 542 BURTON, CH. 480
FAM 5208, 5212, 5234, 5246, 17000 ET SEQ.; R&T 19271, 19272, 19275; UI 1088.8; W&I 18205

Part of a major child support enforcement reform package. Strengthens the role of the Franchise Tax Board (FTB) in collecting past-due child support and requires a single statewide child support collections system under the supervision of a new Department of Child Support Services. Major provisions in the bill include phasing in the new child support system over three years beginning January 1, 2001; giving the FTB statewide responsibility for collection of all delinquent child support pay-

ments; and clarifying the direct oversight by the director of the new department over the child support functions of local agencies.

CHILD SUPPORT ENFORCEMENT REFORM **T**

AB 196 KUEHL, CH. 478
FAM 17000 ET SEQ.; GOV 12803; R&T 19271, 19533; UI 1088.8; W&I 11476.6, 11476.13, 11477, 11477.02, 11477.04, 11479, 11485

Part of a major child support enforcement reform package. Establishes the Department of Child Support Services, which would replace the Department of Social Services as the state Title IV-D child support enforcement agency. Creates new county departments of child support services and requires that the local Title IV-D child support program be transferred from the district attorney to the new departments by January 1, 2003. Changes the funding structure of the local child support departments.

CHILD SUPPORT AUTOMATION SYSTEM **T**

AB 150 ARONER, CH. 479
URGENCY, EFFECTIVE: 09-07-99
FAM 10080, 17710

Part of a major child support reform package. Requires the new state department responsible for child support enforcement to procure, develop, implement, and maintain the operation of the California Child Support Automation System in all California counties.

CHILD SUPPORT: STATE ADMINISTRATIVE HEARING **T**

AB 472 ARONER, CH. 803
FAM 17401, 17800 ET SEQ.; W&I 10950, 10951, 10963, 18242, 18243

Permits custodial and noncustodial parents to request a state administrative hearing to consider a parent's claim about a state or county child support agency's actions (or inaction) relating to child support collections, procedures, and services. Specifies that child support matters subject to the jurisdiction of the superior court, or required by law to be brought by motion or appeal, may not be addressed in a state administrative hearing. Also amends child support assurance demonstration projects.

CHILD SUPPORT **T**

AB 370 WRIGHT, CH. 654
FAM 17520, 17525; W&I 11476.3

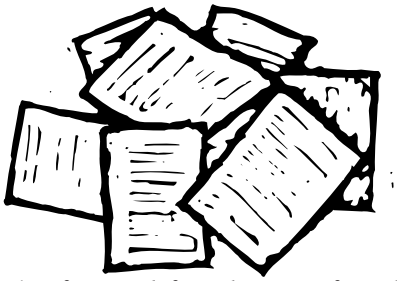
Once the statewide automation system is in place, requires a notice of support delinquency to state the date upon which the delinquency amount was calculated and notifies the obligor if the amount includes interest. Requires notice to the obligor of his or her rights to an administrative determination of arrears. Requires any professional board that has received a release from the district attorney pursuant to the provisions of this code to process the release within five business days.

GOVERNMENT CODE

FILING FEES: CHILDREN'S WAITING ROOMS **T**

AB 177 PAPAN, CH. 115
GOV 26826.3

Provides that it is the policy of the state that each court endeavor to provide a children's waiting room in each courthouse. Until January 1, 2010, authorizes a county board of supervisors to impose a surcharge of not less than $2 but not more than $5 on specified filing and



motion fees to defray the cost of establishing and maintaining such waiting rooms. States legislative intent that the surcharge be used to provide children's waiting room services for children whose parents or guardians attend court proceedings on an infrequent basis, either as parties or witnesses or for other court purposes, as determined by the court.

PENAL CODE

DOMESTIC VIOLENCE: CONFIDENTIAL RECORDINGS **T**

AB 207 THOMSON, CH. 367
PEN 633.6

Authorizes a judge issuing a domestic violence protective order to permit the victim to record otherwise prohibited communication made to him or her by the perpetrator. Requires the Judicial Council to amend its domestic violence prevention application and order forms accordingly.

WELFARE AND INSTITUTIONS CODE

DEPENDENT CHILDREN: TIMEFRAMES, CONFIDENTIALITY **A,T**

SB 518 SCHIFF, CH. 346
W&I 300.2; CCP 917.7

Shortens the time period of the stay of a judgment or an order of the dependency court allowing removal of a minor from the state from 30 days to 7 days. States that confidentiality provisions are intended to protect the privacy rights of the child.

JUVENILE DEPENDENCY: SEXUAL ABUSE BY PARENT **T**

SB 208 POLANCO, CH. 417
URGENCY, EFFECTIVE: 09-16-99
W&I 355.1

Creates a presumption in dependency proceedings that a child before the dependency court is at substantial risk of abuse or neglect if the parent or guardian is currently alleged to have committed, or previously was convicted of, sexual abuse. Expressly authorizes dependency courts to direct the mandatory child abuse reporting of a minor whom the court believes has been a victim of criminal abuse or neglect.

DEPENDENT CHILDREN: STATUS REVIEW HEARINGS **T**

SB 1226 JOHANNESSEN, CH. 399
W&I 361.5

Provides that a parent's failure to make substantive progress in any court-ordered treatment program shall be prima facie evidence that return of a dependent child to the parent's custody would be detrimental. Provides that reunification services need not be provided when the services have been terminated in the case of a sibling or half-sibling for specified reasons.

DEPENDENT CHILDREN: FOSTER CARE: SIBLING GROUPS **T**

AB 740 STEINBERG, CH. 805
W&I 361.5, 366.21

Provides that a dependent child who is a member of a sibling group in which one of the siblings is under three years of age may receive child welfare services for only six months, or a longer period of time if the court makes specified findings at the six-month review hearing. Requires the court to consider specified factors in the social worker's report about a sibling group.

MINORS: OUT-OF-STATE PLACEMENTS **T**

AB 1659 ASSEMBLY COMMITTEE ON HUMAN SERVICES, CH. 881
URGENCY, EFFECTIVE: 10-10-99
W&I 361.21, 727.1; FAM 7911, 7911.1

Provides that the court shall not order the placement of a minor in an out-of-state group home unless it makes a finding that in-state facilities or programs are unavailable or inadequate to meet the needs of the minor.

JUVENILE DELINQUENCY AND DEPENDENCY: OUT-OF-HOME PLACEMENT **T**

AB 575 ARONER, CH. 997
W&I 366.23, 366.26, 706.6, 726.4, 727.2

Brings California into compliance with federal mandates of Title IV-E of the Social Security Act and the Adoption and Safe Families Act of 1997 for wards of the court who are in out-of-home care. Court-related provisions address numerous issues, including: adoption, out-of-home placement, status reviews, statements of finding, appointment of counsel, timeframes, and notice of hearings. Requires the Judicial Council to adopt rules of court, forms, and procedures.

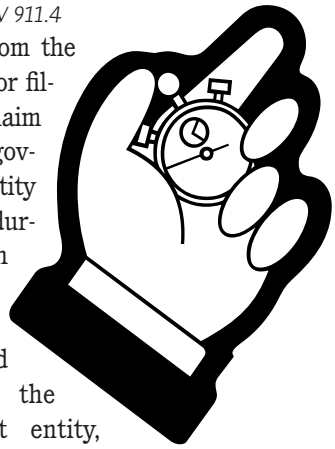
JUVENILE DEPENDENCY: EDUCATION RECORDS AND PSYCHOTROPIC MEDICATIONS **T**

SB 543 BOWEN, CH. 552
W&I 369.5, 16010

Provides that parents who have lost custody of a child due to abuse or neglect cannot continue to authorize the administration of psychotropic medication for that child without a court order. Permits the court to authorize the administration of such medication without the parent's consent at the request of a physician. Requires the case plan for a child to include a summary of education and health records, and that the child's caretaker be provided a copy of the summary within 30 days of the initial placement into foster care and within 48 hours of any subsequent placement. Requires the child's caretaker to keep updated health and education information concerning the child and to provide the updated information to the child protective agency. Requires the Judicial Council to adopt forms.

DEPENDENT CHILDREN: CLAIMS AGAINST GOVERNMENT ENTITIES **T**

AB 118 WASHINGTON, CH. 620
W&I 396; GOV 911.4

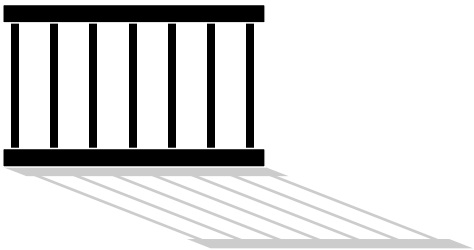


Exempts from the time limit for filing a late claim against a government entity the time during which (1) a child is in the custody and control of the government entity, and (2) the public entity having custody and control has failed to make a mandated report of abuse. States legislative policy that foster care should be temporary.

YOUTHFUL OFFENDERS: TRIAL AS ADULTS: REVERSE REMAND **T**

SB 334 ALPERT, CH. 996
URGENCY, EFFECTIVE: 10-10-99
W&I 602.5, 725.1, 730.7, 827.1, 827.6

Provides that a minor 16 years of age or older shall be prosecuted in adult criminal court if the minor has been: (1) accused of committing murder in the first degree, attempted premeditated murder, an aggravated sex offense, an aggravated kidnapping, or any specified felony where a firearm was used and discharged; or (2) previously adjudicated as a ward of the court by committing any felony when 14 years of age or older. Enacts a



reverse remand provision authorizing the court to impose, in certain circumstances, a juvenile disposition for a minor convicted after a direct file prosecution in adult criminal court. Provides that any minor who personally uses a firearm to commit a violent felony shall be placed in a juvenile hall, ranch, camp, or California Youth Authority facility, unless the court finds that the minor has a mental disorder requiring intensive treatment. Provides that a minor who is 14 years of age or older and taken into custody for the possession of a firearm during the commission of a felony shall not be released until he or she is brought before a judicial officer. Requires the judicial officer to order an assessment of the minor's mental health. Provides that the parents of minors released to home supervision must sign a document acknowledging the terms and conditions of release. Provides that crime victims have the right to present victim impact statements in all juvenile court hearings. Reorganizes existing provisions regarding closed hearings. Requires the juvenile court to make written findings if it orders to be kept confidential the name or the records of specified proceedings. Requires daily posting of hearings open to the public.

SEXUALLY VIOLENT PREDATORS: JUVENILE COURT PRIOR ADJUDICATION **T**

SB 746 SCHIFF, CH. 995
W&I 6600, 727.2

Allows the use of one of the two forcible sex offenses necessary to render a prison inmate eligible for commitment as a sexually violent predator to be a juvenile adjudication for such an offense.

JUVENILE COURT RECORDS: SEALING AND DESTRUCTION **T**

AB 744 MCCLINTOCK, CH. 167
W&I 781.5

Requires the sealing of a minor's record of detention, arrest, or citation where no accusatory pleading is filed or sustained, upon a determination by law enforcement, probation, or the court on hearing or motion, that the minor is factually innocent. Such records shall be sealed for three years and then destroyed, except where a civil action has been filed concerning the detention, arrest, or citation, in which case the records shall not be destroyed until final resolution of the action. Requires the court to give the minor copies of court orders directing sealing or destruction of such records.

JUVENILE COURT RECORDS: CONFIDENTIALITY **T**

SB 199 POLANCO, CH. 984
W&I 827

Enacts the Lance Helms Law of Confidentiality, which would generally require the court, after a hearing on a noticed petition, to provide access to a juvenile case file if a child is deceased. Requires, however, that identifying information regarding siblings and half-siblings be redacted from the record. The court would prohibit or limit disclosure only if it finds that disclosure would be detrimental to the protection, safety, and well-being of the sibling or half-sibling.

YOUTH AUTHORITY: PURPOSE **T**

AB 637 MIGDEN, CH. 333
W&I 1700

Revises the purposes of provisions governing the commitment of juvenile offenders to the California Youth Authority by substituting community restoration, victim restoration, and offender training and treatment for retributive punishment.

SEXUALLY VIOLENT PREDATORS **T**

SB 11 SCHIFF, CH. 136
URGENCY, EFFECTIVE: 07-22-99
W&I 6601, 6601.1

Provides that a petition to have an offender declared to be a sexually violent predator shall not be dismissed on the basis of a later judicial or administrative determination that the offender's custody was unlawful as the result of a good-faith mistake of fact or law. Applies to any petition filed on or after January 1, 1996.

DEPENDENT CHILDREN: PROGRAM GOALS **T**

SB 955 ESCUTIA, CH. 634
W&I 11462.07, 16500.1

States the Legislature's intent and sets forth goals to better serve the needs of dependent children. Requires the state Department of Social Services to use new approaches to child protection in the areas of education, foster care, case planning, licensing requirements, training for foster parents, and placement resources. Requires the department to consider using "wrap-around services" such as family conferencing, team decision making in case planning, and community-based placement practices. Requires the department to report to the Legislature on or before January 1, 2002. ■

Summaries of Rules and Standards

The following are brief descriptions of rules and standards passed during 1999 that directly affect family and juvenile law. For a complete list of rules and standards passed during 1999, please visit www.courtinfo.ca.gov.

Rule 1208. Minimum standards for the office of the family law facilitator—New rule 1208 provides standards for experience, training, and means of providing service for the office of the family law facilitator, as required by Family Code section 10010.

Rule 1258. Standards for computer software to assist in determining support—Amended rule 1258 provides that software programs certified under the rule for determining child support may be used in any court.

Rule 1277. Use of existing family law forms—Rule 1277 is repealed because it is obsolete.

Rule 1279. Reference to UCCJEA instead of UCCJA—New rule 1279 reflects the repeal of the Uniform Child Custody Jurisdiction Act (UCCJA) and its replacement by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Rule 1280.9. Reference in forms to conform to Family Code Division 17—New rule 1280.9 reflects the replacement of the district attorney as the local child support agency with the new county department of child support services and provides that references to the repealed Welfare and Institutions Code section be deemed to refer to the corresponding new sections of the Family Code.

Rule 1424. Program guidelines for Court-Appointed Special Advocate programs—Amended rule 1424 requires a CASA program to specify in its governance plan a clear administrative relationship with the parent organization. The amended rule also prohibits any CASA program from functioning under the auspices of a probation department or department of social services after July 1, 2001.

Rules 1412, 1429.1, 1429.3, 1429.5, and 1458—Title Five, Division Ic, new Chapter 6 contains new rules 1429.1, 1429.3, and 1429.5, which address orders issued by the juvenile court: restraining orders, custody orders, and guardianships. Subdivision (o) of rule 1412 and rule 1458 are repealed because they are no longer necessary with the adoption of new rule 1429.5.

Rules 1455, 1460, and 1461—Amended rules 1455, 1460(c), and 1461(c) conform to recent statutory amendments that specify a plan of action if the petitioner is recommending removal of the child from the home. ■

Dependency Case Summaries

CASES CURRENT THROUGH NOVEMBER 10 PUBLICATION DATE

***Renee S. v. Superior Court of Sacramento* County (1999) ___Cal.App.4th___ [90 Cal.Rptr.2d 134]. Court of Appeal, Third District.**

In proceedings on three dependency petitions, the juvenile court denied a parent's request to conduct jurisdiction hearings on a continuous basis. The parent's counsel predicted the hearing would consume multiple days of trial time. Although the juvenile court acknowledged the children's and parent's rights to expeditious adjudication, the court decided to continue to adhere to its approach of conducting contested hearings only on Thursdays and Fridays. The children were first detained and the detention hearing was held and concluded in early June. The jurisdiction hearing was scheduled for the end of June but continued to the end of July over the mother's objection because the father's counsel requested to be relieved due to conflict. After a few days of trial at the end of July, the court continued the hearing until the end of August over the mother's objection. The court responded to the objection by citing its scheduled vacation and a vacation planned by the father's counsel as the reasons for the continuance. At the end of August, there were a few more days of trial and the matter was continued again until the end of September. In August, the mother sought writ relief from the Court of Appeal.

The Court of Appeal decided the case, agreeing with the mother despite the fact that by the time of the appeal, the juvenile court had dismissed all three petitions. The appellate court found that the issue was not moot because it was widespread and urgent, due to the fact that the record showed that Sacramento County only allowed trials in dependency cases on Thursdays and Fridays. The court found that this practice is a violation of the Welfare and Institutions Code and *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 66 Cal.Rptr.2d 343. The court found it was appropriate for it to decide the issue in order to give guidance for future matters, notwithstanding the disposition of the underlying matter in the lower court.

The Court of Appeal, deciding the merits of the case, found that when the juvenile court continued the hearing from the end of July until the end of August with no showing of "exceptional circumstances," the court was in violation of the statutory mandate for expeditious adjudication. The appellate court analyzed Welfare and Institutions Code section 352, the primary statute governing continuances in dependency cases. The court found that the statute provides that no continuance shall be granted that is contrary to the best interest of the child. When considering the child's interest, the court is to give substantial weight to the child's need for a quick resolution and stable environment as well as the damage to the child caused by prolonged detention out of the home. The appellate court found that the statute also provides that when a child is detained out of the home, no continuance shall be granted that would cause the disposition hearing to be held later than 60 days from the detention hearing without a showing of "exceptional circumstances." The court found that in *Jeff M.*, the appellate court held that court congestion was not an "exceptional circumstance" justifying a continuance taking the disposition hearing out of the 60-day period. In that case, the appellate court ordered the juvenile court, which had continued the case for over a year, to conduct trial every day, all day, without continuances in the absence of good cause, until the case was completed. There the appellate court acknowledged the heavy caseloads and inadequate resources that the juvenile court faced but held that the issue was resolved by legislative mandate under section 352. Here, the appellate court found that the continuance of trial to the end of August made it impossible to hold the disposition hearing within 60 days of the detention hearing and that the record was bereft of any finding of "exceptional circumstances." Without a showing of "exceptional circumstances," the court was required to complete the hearing on a day-to-day basis under the rationale of *Jeff M.*

The appellate court here found that when setting a trial date, the juvenile court is not specifically required to proceed on a day-to-day basis in order to keep within the statutory time frames, but that the day-to-day basis is just one way to keep within those time frames. The appellate court found that the juvenile court may be forced to transfer the case to another department when it knows it cannot meet the time frames required by statute, or the court may be forced to order substitution of counsel if that will help. Here, the appellate court found that trial on a continuous basis was warranted in view of the circumstances.

***In re Andrea R.* (1999) 75 Cal.App.4th 1093 [89 Cal.Rptr.2d 664]. Court of Appeal, Second District, Division 7.**

The juvenile court terminated parental rights and referred the child for adoption. A legal guardianship had been established for the child six years earlier. The parents of the child had criminal histories and substance abuse problems. During the six-year guardianship, the child would visit with the parents and afterwards display signs of anxiety and confusion. Near the end of the guardianship, the mother had made significant progress in her drug treatment and reunified with half-siblings of the child in this case; however, the Department of Children and Family Services recommended changing the child's

permanent plan to adoption. The parents appealed the juvenile court order terminating parental rights and referring the child for adoption, claiming that they were entitled to a full evidentiary hearing on the issue of changed circumstances prior to the court holding a new Welfare and Institutions Code section 366.26 hearing. The parents also claimed that the trial judge abused her discretion when she terminated parental rights because she was new to the case, refused the mother's request to allow the child to testify at the 366.26 hearing, and did not consider the strong child/parent relationship under section 366.26(c)(1)(A).

In a partially published opinion, the Court of Appeal disagreed with the parents and affirmed the juvenile court orders. The appellate court found that no authority was cited to support a finding of a procedural requirement for a full evidentiary hearing to determine if there were changed circumstances to warrant setting a new 366.26 hearing. The court found that rule 1466(b) of the California Rules of Court provides that if circumstances have changed since the implementation of a long-term foster care plan, then the court may order a new plan under section 366.26 at any subsequent hearing. The court found, based on this rule and the mandatory preference for adoption over legal guardianship, that the court was permitted to hold a new 366.26 hearing to determine a new permanent plan without holding a full evidentiary hearing separately noticed upon a section 388 petition. The appellate court found that the parents provided no authority to support a finding that the juvenile court lacked jurisdiction to hold an instant section 366.26 hearing.

The appellate court also found that to the extent the parents claimed that the juvenile court was required to make a judicial finding of changed circumstances prior to changing the permanent plan, the juvenile court did make judicial findings. Instead of deciding that the juvenile court was required to make a judicial finding of changed circumstances, the appellate court found that the juvenile court did make such a finding without deciding that the juvenile court was in fact required to do so. The appellate court found that the juvenile court questioned the guardianship plan beginning two years prior to the 366.26 hearing by acknowledging that circumstances had changed since the previous hearing. Furthermore, the court found that the juvenile court made comments at the 366.26 hearing that the social workers' reports contained evidence of changed circumstances. The appellate court found that this was enough to satisfy any requirement, if one existed, that there be a judicial finding of changed circumstances prior to changing the permanent plan.

The appellate court disagreed with the parents' contention that by terminating parental rights the juvenile court abused its discretion since a new judge was working on the case. The appellate court found nothing in the record to support an assertion that the judge had insufficient knowledge of the case or that the court did not entirely review the file and history of the case prior to the new permanency hearing. The appellate court found that the parents were aware of the contents of the file before the court at the time of the new permanency hearing and should have requested the court to consider any additional documents or records at that time. The parents' failure to make a record at that hearing cannot be attributed to the juvenile court.

The court disagreed with the parents' contention that it was an abuse of discretion to deny their request to allow the child to testify. The court found that the child was requested to testify only at the section 366.26 hearing concerning whether guardianship or adoption was the appropriate plan. The appellate court found that the parents failed to present any authority to support their contention that the denial was an abuse of discretion considering that the guardians were the prospective adoptive parents and that the child had been happily living with them for over a year.

The appellate court dismissed the parents' final contention that terminating parental rights was an abuse of discretion because the mother had met her burden under Welfare and Institutions Code section 366.26(c)(1)(A) to show that the child would benefit from a continuing parent/child relationship. The appellate court found that, other than argument, no evidence was offered on this point by the parents. The appellate court found that in order to succeed under this section, the parents must demonstrate that they occupy a "parental role" in the child's life that promotes the child's well-being so much that to sever the relationship would do more damage than the permanence and stability that would result from the severance. The appellate court found that the record supported an implied finding that the parents did not establish this. The appellate court found the evidence showed that neither parent visited the child regularly or progressed beyond monitored visits. The court found that the visits that did occur left the child visibly upset and confused. Accordingly, the appellate court refused to find that the juvenile court abused its discretion in

finding that the section 366.26(c)(1)(A) exception did not apply and in terminating parental rights.

In re Urayna L. **(1999) 75 Cal.App.4th 883 [89 Cal.Rptr.2d 437]. Court of Appeal, Second District, Division 3.**

At a Welfare and Institutions Code section 366.26 hearing, the juvenile court terminated the parental rights of a mother. The juvenile court, at that permanency hearing, reviewed a report that included a review of the nature of the contact between the child and the biological relatives of the child as required by Welfare and Institutions Code section 366.22(b)(2). The report indicated that the child was not comfortable with the mother at the visits, which were primarily arranged by the child's maternal grandmother. The mother appealed, contending that the report failed to review the nature of the contact between the child and the maternal grandmother. The Department of Children and Family Services (DCFS) contended that the mother waived the issue when she failed to object to the report at the permanency hearing and assert her right to a more complete report. The mother responded by claiming that it was DCFS's burden to establish that the child was adoptable and that DCFS did not meet its burden because it failed to review the nature of the contact between the child and the maternal grandmother.

The appellate court agreed with DCFS and ruled against the mother. The court found that if there had been contacts between the maternal grandmother and the child such that adoption would not have been in the best interest of the child, then the mother could have raised this issue herself at the trial level. The mother's silence about the nature of these contacts indicated to the appellate court that she did not see anything that was not in the report that would be helpful to her case. The appellate court distinguished this from *In re Precious J.,* which is the case the mother relied on for her position. In that case, the court found that the termination of parental rights was an error because the most important component of reunification services, visitation, was not provided to the mother. *In re Precious J.,* (1996) 42 Cal.App.4th 1463, 50 Cal.Rptr.2d 385. Here, DCFS did provide the report; the only problem was the report's adequacy. The court held that the adequacy of a report is the sort of issue that must be developed by cross-examination and by putting on one's own evidence. The court held, therefore, that the mother's failure to attack the report at the trial level precluded her from attacking it on appeal.

Ingrid E. v. Superior Court of Sacramento County **(1999) 75 Cal.App.4th 751 [89 Cal.Rptr.2d 407]. Court of Appeal, Third District.**

Before setting a Welfare and Institutions Code section 366.26 hearing, the juvenile court denied a mother's request for a contested hearing with respect to the adjudication of the children as dependent and the Department of Health and Human Services' (DHHS) decision to terminate reunification services. Counsel for the mother filed a statement identifying the mother, the social worker who recommended termination of reunification services, the psychologist who gave the mother a negative evaluation, and the mother's therapist who disagreed with the psychologist's evaluation as prospective witnesses for the requested contested hearing. The statement, furthermore, averred that the issues in the case were that DHHS could not prove there was any substantial detriment to the children if returned to the mother; mother had completed her case plan and benefited; the mother's therapist disagreed with the psychological evaluation of the mother; and that the evaluation was based on old, stale information. However, the court denied the request, stating that counsel had not submitted a proper offer of proof to convince it that the mother was entitled to a contested hearing. The mother sought review by way of writ petition, contending that the denial was an abuse of discretion and a violation of her due process rights.

The Court of Appeal agreed with the mother, finding that it was an abuse of discretion and violation of her due process rights to deny her a contested hearing. The court disagreed with DHHS and refused to find that any error by the juvenile court was harmless. The court noted that it is axiomatic that due process applies in dependency proceedings. The court reviewed a trio of recent cases that deal with due process rights in the late stages of dependency as this case does. Those cases are *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 75 Cal.Rptr.2d 851; *In re Jeanette V.* (1998) 68 Cal.App.4th 811; 80 Cal.Rptr.2d 534; *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138; 78 Cal.Rptr.2d 488. In *Andrea L.* and *Maricela C.,* the appellate courts upheld denials of the parents' requests for contested hearings. In *Andrea L.,* the court found that the denial was an error but not prejudicial since the parent did not request a cross-examination of adverse witnesses. In *Maricela C.,* the court found that the denial was correct because the mother failed to proffer any evidence that returning the children to her custody would be in their best interest. *In re Jeannette V.* held that even with a proffer of proof, cross-examination of a social worker was not compelled as a matter of due process at the section 366.26 hearing. The appellate court distinguished the facts here from the facts in all of the above cases. The court noted that the major differences were that here the parent did seek cross-examination of adverse witnesses; did proffer evidence tending to show that returning the children to her custody was in their best interest; and did so at a stage in the proceedings that was her last realistic chance to prevent termina-

tion of her parental rights, since it was a 366.22 hearing and not a 366.26 hearing where that realistic chance had already passed. Those distinctions led the appellate court to conclude that while there are no decisional, statutory, or rule-based provisions that are dispositive of the issues raised in this case, the court must still be mindful of its obligation to accord the juvenile court the broadest possible scope of operation in order to promote the best interest of the child.

The appellate court found, however, that according the juvenile court the broadest possible scope of operation does not include denying a parent the right to present evidence and cross-examine government witnesses. The appellate court found that even if the juvenile court did have discretion to deny the contested hearing, here the denial was an abuse of discretion. Instead, it is DHHS's burden to prove that returning the children to a parent creates a substantial risk of detriment, and if DHHS fails to meet that burden, the court has to order the children returned. The appellate court found that here, even if the mother had not proffered evidence that the children could be returned without detriment, which she did do, the mother still expressed a desire to cross-examine the witnesses whose reports were the basis of DHHS's recommendations. The court found that after balancing the parent's interest in custody of her children against the state's interest in expediency, the circumstances of this case weighed in favor of the parent's interest and a full hearing.

The appellate court disagreed with DHHS's claim that any error here was harmless because the mother required constant supervision. The court found that because the mother wanted to prove that DHHS was relying on old and stale information, its claim that she required constant supervision was erroneous. Considering this proffer by the mother, the appellate court refused to

speculate that her intended examination of the witnesses would be fruitless. The appellate court then remanded the case to the juvenile court for a contested hearing and ordered the juvenile court to vacate its orders setting a 366.26 hearing.

***Marshall M. v. Superior Court of Kern County* (1999) 75 Cal.App.4th 48 [88 Cal.Rptr.2d 891]. Court of Appeal, Fifth District.**

The juvenile court denied a father reunification services under Welfare and Institutions Code section 361.5(b)(10) and ordered a section 366.26 permanency hearing. The juvenile court found that it had previously ordered a permanent plan for other children of the same parents as a result of the parents' failure to reunify after the children were removed from their custody under section 361 of the Welfare and Institutions Code. The juvenile court made no finding about the father's subsequent attempts to treat the problems that led to the removal of these siblings. The father sought review by way of extraordinary writ, claiming that he was entitled to reunification services because he treated the problems that led to the siblings' permanent plans. He also claimed that the current dependency case was based on different problems that he should have a chance to correct.

The appellate court disagreed with the father and denied the appeal. The court found that two basic assumptions were crucial to the father's appeal: he assumed that before the court denied reunification services it must (1) evaluate the problems that led to the siblings' permanent plans and (2) find that he did not make a subsequent reasonable effort to treat those problems. The appellate court analyzed section 361.5 since this section guides the court when it decides a child should be placed in out-of-home care. Specifically, the court analyzed section 361.5(b)(10), which provides the justification for denying reunification services. The court found that there was ambiguity in the statute. Under section 361.5(b)(10)(A), a court can deny reunification services if a sibling has had a permanent plan ordered because the parent failed to reunify. Under section 361.5(b)(10)(B), a court can deny reunification services because it has terminated parental rights to a sibling and has found that the parent has not made reasonable efforts since to treat the problem that caused the termination. The question is whether the language of subparagraph (B) regarding reasonable efforts to treat the parent's problem also applied to subparagraph (A). At least one appellate case found and one rule of court indicates that it does apply. *Shawn S. v. Superior Court* (1998) 67 Cal.App.4th 1424, 80 Cal. Rptr.2d 80; Cal. Rules of Court, rule 1456(f)(4)(J). The court here, applying rules of statutory construction, disagreed with the reasoning of *Shawn S.* and found that the "reasonable effort" language of subparagraph (B) did not apply to subparagraph (A). The court found that applying the "reasonable effort" requirement to subparagraph (A) would ignore the Legislature's choice to use the markers "(A)" and "(B)" to delineate the two separate scenarios under which reunification services can be denied.

Beyond statutory construction, the appellate court found a basic distinction between the two scenarios. Under scenario (A), the parent has been given a chance to reunify and failed. Under scenario (B), the parent has had his or her

parental rights terminated, but the termination does not have to be the result of a failure to reunify. A parent may have parental rights terminated without any attempt to reunify the parent and child by treating the problems that led to the termination. Therefore, the Legislature included the "reasonable effort" requirement in subparagraph (B) and not subparagraph (A) to cover situations where the court knows as a matter of law that a parent did not make a reasonable effort to treat the problems that led to removal.

Finally, the appellate court found that the rule of court that applies the "reasonable effort" language to both scenarios was not persuasive since it does not track the statutory language. The rule adds new terms and omits others. Since the rule is inconsistent with statute, the court disregarded the rule.

***Dawnel D. v. Superior Court of Orange County* (1999) 74 Cal.App.4th 393 [87 Cal.Rptr.2d 870]. Court of Appeal, Fourth District, Division 3.**

At a six-month review hearing, the juvenile court terminated reunification services and scheduled a Welfare and Institutions Code section 366.26 permanency hearing. The child in this case was born addicted to amphetamines. The court placed the child in out-of-home care and ordered a reunification plan that included a substance abuse rehabilitation program as well as weekly monitored visitation. The mother maintained regular visitation but failed drug tests. At the 6-month review hearing, the court determined that there was not a substantial probability that the mother would reunify with the child by the 12-month review hearing. The court also found that there was clear and convincing evidence that returning the child to the mother would be detrimental since she had not regularly complied with the reunification plan. The court thereafter terminated reunification services and set a permanency hearing. The mother petitioned the appellate court for extraordinary relief. She claimed the court abused its discretion when it terminated reunification services because she regularly participated in the reunification plan. She also claimed that the court examined the wrong time frame when determining whether there was a substantial probability she would reunify with the child and that termination of services after only 6 months was a violation of her due process rights.

The appellate court did not agree with the mother's contention that the juvenile court abused its discretion when it terminated reunification services; however, it did agree that the lower court examined the wrong time frame when it determined the probability of reunification. The court found that, despite the mother's consistent participation in other parts of the plan, her failure to regularly participate in the crucial part of the plan, drug rehabilitation, was substantial evidence of her noncompliance with the plan.

The appellate court did find, however, that the juvenile court erred when it examined the time between the 6-month review hearing and the 12-month review hearing. Instead, the appellate court found that, according to Welfare and Institutions Code section 366.21(e), the juvenile court should have examined a full 6-month period from the time of the 6-month review hearing regardless of the expiration time for the 12-month review hearing. The court found that this was consistent with the rest of the code, specifically Welfare and Institutions Code section 361.5(a), which allows up to 18 months of services. However, the appellate court disagreed with the mother's contention that the evidence supported a finding of substantial probability of reunification under the new, longer time frame and that the appellate court must direct the juvenile court to order more services. The appellate court ordered a new hearing requiring the juvenile court to determine the possibility of reunification under the proper time frame.

Finally, the appellate court did not address the due process question since the ruling on the time frame to be used for determining the possibility of reunification was dispositive. If the lower court orders more services, the due process question will become moot.

***In re Carlos G.* (1999) 74 Cal.App.4th 1138 [88 Cal.Rptr.2d 623]. Court of Appeal, Third District.**

The juvenile court terminated parental rights to a child who, at birth, tested positive for amphetamines and methamphetamines. The mother informed the social worker that she believed her mother might be of "Miwok heritage" while the father, appellant in this case, informed the social worker that he had Native American heritage on his mother's side but did not know which tribe. The Department of Social Services (DSS) sent notice of the jurisdiction hearing to 11 Indian tribes and rancherias and notice of the disposition hearing to 10 tribes and rancherias. After the court adjudged the child a dependent, removed the child from the parents' custody, and ordered reunification services, 3 tribes stated the child was not a member of their tribe, and the other tribes never responded. DSS sent 9 tribes notice of the six-month review hearing and 14 tribes notice of the Welfare and Institutions Code section 366.26 permanency hearing. At the permanency hearing, the court found that

no Indian tribe had come forward in response to the notices, and that beyond a reasonable doubt DSS had made active efforts to prevent removal of the child, but that continued parental custody would be likely to result in serious emotional or physical damage to the child. The court then terminated parental rights after finding the child was likely to be adopted. The father claimed on appeal that DSS failed to comply with the notice and placement requirements of the Indian Child Welfare Act, specifically that DSS should have sent notice to the Bureau of Indian Affairs (BIA).

The court of appeal disagreed with the father and affirmed the rulings of the juvenile court. The appellate court examined the notice requirements of the Indian Child Welfare Act, finding that the child was entitled to the protections of the act irrespective of the actions of the parents. The court then examined rule 1439(f) and (g) of the California Rules of Court, which provides that unless it is determined by the tribe that the child is not an Indian child, then notice shall be sent to all tribes of which there is reason to believe the child is a member. The appellate court found that in light of the fact that the act applies only to children eligible for tribal membership and that DSS received three negative responses, BIA involvement would be of no assistance. The appellate court also found that DSS and the juvenile court were under no obligation to enlist BIA to find more possible tribal names.

The appellate court found further that the timing of the required notices is controlled by federal law that provides that each tribe must get at least 10 days' notice of each hearing. DSS provided at least 10 days' notice of every hearing except the jurisdiction hearing. However, because the father did not appeal from that order, he waived his right to complain of the defective timing.

Finally, the court was not persuaded by the father's claim that the proceedings were controlled by the Indian Child Welfare Act. The father cited rule 1439(e) in support of his claim. This rule provides that if the court has reason to believe the child may be an Indian child, then proceedings shall be pursuant to Welfare and Institutions Code timelines but shall comply with the Indian Child Welfare Act. However, the rule also provides that a determination by the identified tribe that the child is not an Indian child is definitive. The court found that the nonresponses and negative responses of several tribes were tantamount to a determination that the child was not an Indian child. Therefore, the juvenile court was free to continue the case outside the constraints of the Indian Child Welfare Act.

In re Janee J. **(1999) 74 Cal.App.4th 198 [87 Cal.Rptr.2d 634]. Court of Appeal, First District, Division 2.**

At a Welfare and Institutions Code section 366.26 hearing (.26 hearing), the juvenile court terminated a mother's parental rights and selected adoption as the permanent plan for the child. Cocaine and marijuana were detected in the child's system at birth. The mother admitted to using cocaine during the pregnancy. The child's two half-siblings were also at one time dependents of the court. The court eventually terminated reunification services and set a .26 hearing. Notice of the .26 hearing and of the need to challenge the setting order by writ petition was provided to the mother. The mother did not pursue a writ petition but rather appealed from the .26 hearing order that terminated parental rights. She claimed error in many of the court's findings and in the notice. The mother backed each claim with a claim of ineffective assistance of counsel.

The appellate court found that most of the mother's claims were beyond the appellate court's review owing to the waiver rule. As to claims capable of review on the merits, the appellate court affirmed the holding of the juvenile court. The court outlined why the waiver rule barred most claims from review. Rule 39.1B requires that, in order for the court to review an order setting a .26 hearing, review shall be sought by way of writ petition. Any appeals from the .26 hearing seeking review of the setting order, when there was no writ petition, are untimely and out of the appellate court's scope of review. The court will hear claims regarding a setting order on appeal from a .26 hearing only if the parent's due process rights are somehow denied—for instance, when the parent does not receive notice of 39.1B rights as in *In re Cathina W.* (1998) 68 Cal.App.4th 716, 80 Cal.Rptr. 2d 480. In the case at bar, the court

found that the mother's due process rights were not deprived but rather that she chose not to pursue writ review, and thus any claims arising from the setting order were waived on this appeal. The court further found that a parent cannot use ineffective assistance of counsel claims as a way of receiving untimely review of a setting order even though the parent is not absolutely barred from presenting late ineffective assistance, right-to-counsel, or other claims arising from the setting order. Raising a late claim requires a defect so great that it deprives the parent of the right to avail himself or herself of the protections of the statutory scheme as in *In re Cathina*

W., and the defect "must go beyond mere errors that might have been held reversible had they been properly and timely reviewed." In the present case, the court found that the mother's claims were not excused from the waiver rule because of a fundamental defect that worked to undermine the statutory scheme.

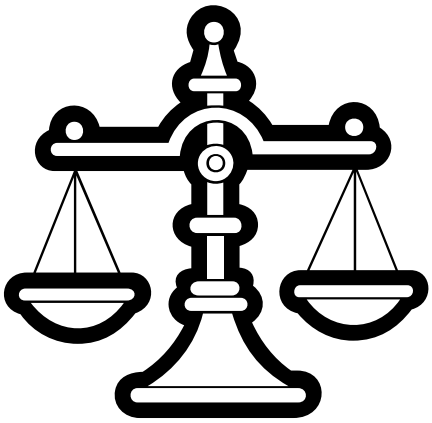
The court used the waiver rule to bar the mother's claims that she did not receive timely notice that her parental rights could be terminated after six months, that the court failed to make adequate findings that return of the child would create a substantial risk of detriment, that reunification services were inadequate, and that the court did not make appropriate placement determinations prior to the .26 hearing. The court stated that for each one of these claims, the mother pointed to no defect that denied her the fundamental protections of the dependency scheme, and without such a showing, these claims are barred by the waiver rule. The mother was also unsuccessful in raising these claims as ineffective assistance of counsel claims; the court found that it is the parent's burden, not the attorney's, to pursue appellate rights, especially in the rule 39.1B setting.

The court did handle some of the mother's claims on the merits. The mother claimed that the court failed to make a finding at the .26 hearing that returning the child home would create a substantial risk of detriment. However, the appellate court found that the juvenile court need not consider reunification at the .26 hearing absent a showing of changed circumstances, because at the .26 hearing the focus is on the child's interest in stability and permanency. The court also rejected the mother's claim that the court had to project a likely date by which the child would be returned home or placed for adoption or legal guardianship at a .26 hearing. The court found that the requirement does not apply to .26 hearings, the point of which is to select and implement the child's permanent placement. Finally, the appellate court found that, contrary to the mother's claim, the juvenile court did not have to make a finding of unfitness at the .26 hearing prior to terminating parental rights. Although the Supreme Court requires a finding of unfitness before terminating parental rights, that finding does not have to come in the same hearing where parental rights are terminated. In California, a finding of unfitness is made at the time a .26 hearing is set, not at the .26 hearing itself. Therefore, the claim cannot be reached on this appeal since it arises from the setting order.

***In re Eric A.* (1999) 73 Cal.App.4th 1390 [87 Cal.Rptr.2d 401]. Court of Appeal, Fourth District, Division 3.**

The juvenile court declared a child a dependent of the court and stripped the father of custody after the child testified that the father had been sexually molesting him. The child suffers from Down's syndrome yet was found competent to testify by the court. The father appealed, claiming that there was insufficient evidence to demonstrate that the child knew the difference between truth and lies and that the court abused its discretion by not allowing an expert to testify on the child's competency. The child moved to dismiss the appeal, claiming that it was moot because the father stipulated, at the six-month review hearing, that the juvenile court was justified in its initial assumption of jurisdiction.

The Court of Appeal agreed with the child, rejected the father's reliance on *In re Jennifer V.,* and dismissed the appeal. In *Jennifer V.,* the court held that a parent did not waive his right to challenge the jurisdictional findings of the court simply because he acceded to disposition orders following the jurisdictional findings. *In re Jennifer V.* (1988) 197 Cal.App.3d 1206. The court reasoned in that case that a parent's accession to a



disposition order facilitates the goal of dependency, family reunification, and that the parent should be able to accede to disposition orders without waiving his rights to challenge the underlying jurisdiction of the court. The court here distinguished the case at bar by finding that the stipulation was not to a subsequent disposition order but rather to the existence of conditions giving rise to the court's jurisdiction. The father, by agreeing that conditions giving rise to jurisdiction existed, waived his right to appeal the court's action. Therefore, the court declared that the case was not controlled by *In re Jennifer V.* and that it should serve as a notice that stipulations acknowledging that "conditions still exist which would justify initial assumption of jurisdiction" are fatal to pending appeals.

***In re Derek W.* (1999) 73 Cal.App.4th 823 [86 Cal.Rptr.2d 739]. Court of Appeal, Second District, Division 6.**

The juvenile court terminated the parental rights of a father at a Welfare and Institutions Code section 366.26 hearing after the foster parents of the child, unwilling to adopt at first, requested adoption. The child was first removed from custody because of addiction at birth to cocaine and amphetamines. Reunification services were later terminated and long-term foster care was selected as the permanent plan. The child had been living with the foster parents for almost nine years. The

father appealed the order terminating parental rights, claiming that his regular visitation with the child over the years had created a relationship that the child would benefit from.

The Court of Appeal held that substantial evidence supported the juvenile court order terminating parental rights. The appellate court found the father had the burden of showing his relationship with the child promoted the well-being of the child to such a degree that it outweighed the benefit of a permanent home with adoptive parents. In order to show this, the court found that the father must show that he occupies a "parental role" in the child's life. Here, the only adults to provide for the care of the child in any fashion were the foster parents. The court found that the regular visitation of the father and resulting emotional bond did not satisfy the "parental role" test and thus affirmed the order terminating parental rights and freeing the child for adoption.

***Cynthia C. v. Superior Court of Orange County* (1999) 72 Cal.App.4th 1196 [85 Cal.Rptr.2d 669]. Court of Appeal, Fourth District, Division 3.**

The juvenile court denied a mother reunification services after finding that she had voluntarily waived her right to reunification services. The mother voluntarily relinquished the child to the county social services agency and eventually signed a Judicial Council form waiving her right to reunification services. After voir dire of the mother by both the court and her attorney, the court accepted her waiver as knowing and voluntary. The hearing was then continued to January in order to perfect service. At the continued hearing in January, the mother indicated that she wished to withdraw her waiver. The juvenile court found by clear and convincing evidence that the mother had made a knowing and voluntary waiver and that there was no showing that reunification services would be in the child's best interest. The court then scheduled a Welfare and Institutions Code section 366.26 permanency hearing. The mother petitioned for extraordinary relief.

The appellate court held that the mother had no right to withdraw her waiver absent a showing that the mother was coerced or misled into waiving her rights or that she had an immediate change of mind after signing the waiver. The court indicated that while Welfare and Institutions Code section 361.5(b)(13) allows for waiver of reunification services, there is no provision that allows for the withdrawal of a waiver. The court found no evidence that the waiver was anything but knowing and voluntary, and almost six months passed between the time the waiver was made and the time of the initial attempt to withdraw that waiver. The court held that without such evidence and considering the length of time it took for the mother to change her mind, it would have been an abuse of discretion to allow the withdrawal and order reunification services.

***In re Anthony B.* (1999) 72 Cal.App. 4th 1017 [85 Cal.Rptr.2d 594]. Court of Appeal, Fifth District.**

At a Welfare and Institutions Code section 388 hearing to consider the mother's motion seeking reinstatement of supervised visitation, the juvenile court denied the mother's petition and set a section 366.26 permanency planning hearing. In 1994 the child had been adjudicated a dependent of the juvenile court. Reunification services were offered and a trial visit initiated. Soon thereafter the Stanislaus County Department of Social Services (DSS) filed a section 388 motion that the court granted, thereby terminating the trial visit, and ordered supervised visitation. Later, reunification services were terminated and a Welfare and Institutions Code section 366.26 hearing was set. The court then suspended visitation pending the section 366.26 hearing. The mother then filed a California Rules of Court, rule 39.1B writ seeking review of the decision to set the section 366.26 hearing. Her writ was denied. At the section 366.26 hearing guardianship was selected as the permanent plan and visitation was terminated without prejudice. Two years later the mother filed a new section 388 petition seeking supervised visitation. DSS then filed its review report and requested that a section 366.26 hearing be set. The juvenile court denied the section 388 motion and referred the case for a section 366.26 hearing. The mother filed a notice of intent to file a rule 39.1B writ petition but later decided not to file a writ petition. The mother then filed a notice of appeal purportedly from the juvenile court's minute order denying the section 388 motion. The section 366.26 hearing was then held and the mother's parental rights were terminated. The mother then filed a notice of appeal. The Court of Appeal on its own motion consolidated the two appeals.

The Court of Appeal affirmed, holding specifically that the mother's objection to the denial of her section 388 motion to reinstate supervised visitation must be raised in a rule 39.1B extraordinary writ petition. The court generally ruled that a parent must file a 39.1B writ petition rather than wait for an appeal of any order, "regardless of its nature," made at the hearing at which

the setting order was entered. The court relied on *In re Charmice G.* (1998) 66 Cal.App.4th 659. *Charmice G.* held that in cases where a parent objects to a denial of a section 388 motion for a request for placement, the parent must file a rule 39.1B writ rather than waiting to appeal. The court extended the holding of *Charmice G.* to objections to a section 388 request for visitation. Section 366.26(*l*) states that for an appellate court to review a juvenile court's denial of a section 388 motion, a parent must file a timely petition for extraordinary writ review that substantively addresses the specific issues to be challenged and is supported by an adequate record. Additionally, the appellate court must deny the writ petition summarily or otherwise not on the merits. Although the holding of *Charmice G.* applied to the denial of a request for placement, the court in *Anthony B.* extended the holding to all collateral orders issued contemporaneously with a setting. The court did recognize that collateral orders issued contemporaneously with a setting order could be consistent with the permanent plan ultimately selected, but that it would be impracticable to carve out an exception for such orders because it would leave the parent at risk to miss deadlines. The court also acknowledged that the holding may prompt juvenile courts to delay rulings on interim motions filed by parents until the next status hearing, thereby making these reviewable only under section 366.26(*l*). The court noted that this would still serve the underlying purpose of section 366.26.

In re Margarita D. **(1999) 72 Cal.App. 4th 1288 [85 Cal.Rptr.2d 713]. Court of Appeal, Fourth District, Division 1.**

After the parental rights of the mother and the putative father were terminated, an alleged biological father came forward and asked the court to (1) set aside the paternity order as to the putative father, (2) set aside the order placing the child with the maternal grandparents, and (3) issue an order affirming his paternity. The juvenile court denied each of the alleged biological father's requests. The child had become a dependent of the court at birth because her mother was incarcerated for killing the child's older brother. Shortly thereafter the court conducted a paternity inquiry that included contacting the alleged biological father and the putative father. The mother and putative father both asserted that the putative father was the child's parent. The alleged biological father did not claim to be the biological parent at that time. Originally the social worker wanted both men to take a paternity test but did not have them do so once it seemed that the putative father was the biological father. The court then made a finding that the putative father was the biological father and entered a judgment to that effect. The court ordered reunification services for both the mother and putative father, but after 12 months terminated these services and set a Welfare and Institutions Code section 366.26 selection and implementation hearing. At the selection and implementation hearing, the court terminated the parental rights of the mother and putative father and selected adoption as the permanent plan. Soon thereafter the alleged biological father became convinced he was, in fact, the father and filed a Welfare and Institutions Code section 388 petition. The maternal grandparents simultaneously filed a de facto parent application, which was granted immediately. The alleged biological father then filed a motion for a paternity test and to set aside the paternity judgment. The juvenile court denied all of the alleged biological father's motions, and he appealed.

The Court of Appeal affirmed the juvenile court ruling, rejecting each of the alleged biological father's contentions. First, when sitting in equity, the court found that an appellate court can set aside a final judgment only if the final judgment was obtained by fraud, mistake, or accident. The criterion relevant to this case is fraud. But only extrinsic fraud can be the basis for relief. Extrinsic fraud is when a party is denied a fair adversarial hearing by being deliberately misinformed about the action or proceeding or otherwise fraudulently prevented from presenting a claim or defense. Here the alleged biological father was complaining of intrinsic fraud, fraud as to the merits of the case. The alleged biological father's "ground for setting aside the paternity judgment is simply that it was based upon false facts supplied by [the mother and putative father]. That is not extrinsic fraud and is not sufficient to set aside judgment." Second, the court found that the juvenile court did not err in not ordering a paternity test for the alleged biological father. The existence of a valid paternity judgment bars the use of blood evidence in a subsequent proceeding to overturn a paternity determination. Therefore, in order for a paternity test to go forward, the alleged biological father would have had to succeed in having the paternity judgment overturned. Since he failed to do so, there were no grounds on which to proceed with paternity testing.

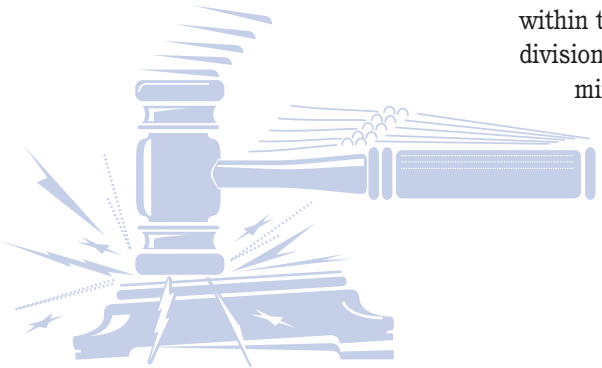
The court further found that the juvenile court had not erred in finding that the alleged biological father had failed to preserve his parental rights. The alleged biological father knew of the child, knew he engaged in activity that could have resulted in her parentage, and denied his paternity to the social worker, failing to assert his rights for approximately two years. Finally, the court found that the juvenile court properly denied the alleged biological father's section 388 motion. Since there was a valid and final paternity judgment in effect, the alleged biological father did not have standing to pursue a section 388 motion. The court further found that even if the alleged biological

father had standing to file a section 388 motion, it would not be in the child's best interest to remove her from loving and caring grandparents into the care of "a man whom she barely knew"; therefore, there was no abuse of discretion.

In re Jesse C. **(1999) 71 Cal.App.4th 1481 [84 Cal.Rptr.2d 609]. Court of Appeal, Fourth District, Division 1.**

At the second postpermanency review hearing, the juvenile court relieved the children's counsel from further representation in the case. The children had been appointed an attorney at the detention hearing and were represented by counsel throughout the dependency proceedings. At the time of the second postpermanency planning hearing, adoption was imminent and there were no legal issues to be resolved. At the hearing the judge relieved counsel and noted that he would reappoint counsel if necessary. The children's attorney first filed a writ, which was denied, and then appealed, contending that although there were currently no legal issues, since adoption was not complete and the case wasn't concluded, she should not have been relieved.

The Court of Appeal rejected counsel's contention and found that she had properly been relieved from representation. Counsel based her claim on Welfare and Institutions Code section 317(d), which states that once appointed, counsel must continue to represent the child until the end of the case unless relieved (1) to be replaced by other counsel or (2) for cause. Counsel argued that the court improperly relieved her for cause based on the issue of whether appointment of counsel would be beneficial to the child rather than the more appropriate standard of counsel's qualifications. The court noted that while counsel is appointed for a parent when the parent desires representation, children are appointed counsel only when the court believes the child would benefit from the appointment of counsel. The appellate court reviewed the circumstances surrounding the appointment of counsel, noting that while the juvenile court has complete discretion to appoint counsel for a child after weighing a number of factors, the court should use its discretion and appoint counsel when the child's interests differ from those of the other parties in the case. In addressing the issue of when counsel should be relieved, the court stated that since the standards for appointing counsel are different for children and parents, the standards should also be different for relieving counsel. After reviewing case law related to relieving parent's counsel, the court held that the reasoning of *Janet O. v. Superior Court* (1996) 42 Cal.App.4th 1058, a case pertaining to relieving parent's counsel, was applicable to relieving children's counsel. *Janet O.* held that where the parents were no longer interested in the proceeding or in being represented by counsel, the juvenile court should revisit the issue of whether the parent should be represented. The appellate court held that "[t]here is good cause within the meaning of section 317, subdivision (d), to relieve counsel for a minor when the trial court finds such representation no longer beneficial to the child." In the present case, the court found that at the time of the second postpermanency review hearing, the children were in stable adoptive placements, there were no current legal issues, and the children's counsel could present no reason that continuing representation would be beneficial to the children. Therefore, counsel was appropriately relieved.



In re Brandon C. **(1999) 71 Cal.App. 4th 1530 [84 Cal.Rptr.2d 505]. Court of Appeal, Second District, Division 4.**

At the permanency planning hearing the juvenile court selected guardianship as the permanent plan rather than termination of parental rights and adoption, which the social worker had recommended. The twin boys had initially come to the attention of the Department of Children and Family Services (DCFS) after they were the victims of domestic violence. They were placed in the care of their paternal grandmother, where they remained. Reunification services were ordered and offered, but the parents had not successfully completed the reunification plan. The juvenile court terminated the reunification services and set a permanency planning hearing. Later DCFS told the court that the permanency planning hearing need not be held soon because the mother appeared to be making progress. At one point the mother filed a Welfare and Institutions Code section 388 petition, but the court denied it because it was not verified. When the permanency planning hearing was finally held, DCFS recommended adoption as the permanent plan and identified the paternal grandmother as the prospective adoptive parent. The mother objected based on the grandmother's age and medical condition. The grandmother also testified that she had medical problems and that the children had a good relationship with the mother. The court exercised its discretion and ordered guardianship with the grandmother for the children. DCFS appealed, contending that there was insufficient evidence to support the court's finding that termination of parental rights would be detrimental to the children.

The Court of Appeal affirmed the

order, holding that there was substantial evidence that the children would benefit from continued contact with the mother. The appellate court noted that under Welfare and Institutions Code section 366.26(c)(1), the juvenile court must terminate parental rights if the court finds that a child is adoptable unless one of four circumstances applies, including the circumstance where "[t]he parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship." The court noted that more than frequent and loving contact is needed to trigger the exception; instead, regular contact must result in the development or continuation of a positive bond between the parent and child. The appellate court found that there was substantial evidence to support the juvenile court's determination that there was a positive bond between the mother and child.

In re Kimberly S. **(1999) 71 Cal.App.4th 405 [83 Cal.Rptr.2d 740]. Court of Appeal, Fifth District.**

The juvenile court terminated the parental rights of a mother but did not advise her of the availability of a kinship adoption agreement. The child had come to the attention of the Department of Social Services after the mother was arrested for being under the influence of a controlled substance. The child was placed first with her maternal aunt and later with her maternal grandmother. Prior to the 12-month review hearing, the mother wrote a letter to the social worker stating that she was giving up her rights to the child and that she was giving those rights to the maternal grandmother. At the 12-month review hearing, the court terminated reunification services and referred the case to the Department of Social Services assessment unit for selection and implementation of a permanent plan. The social worker's report found that the child was adoptable and the maternal grandmother would be a suitable caretaker. The report recommended that parental rights be terminated, and the juvenile court terminated parental rights. The mother appealed the termination, contending that she was entitled to notice of availability of a kinship adoption agreement before the court terminated parental rights.

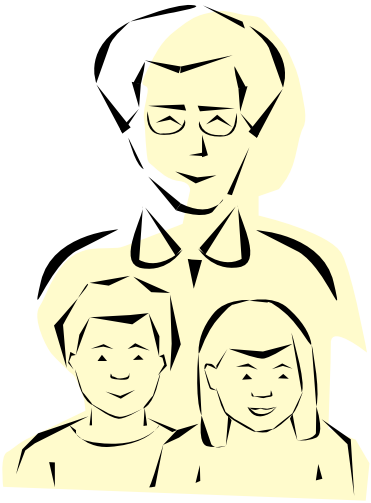
The Court of Appeal rejected the mother's contention, holding that nothing in either the kinship adoption statute or the juvenile dependency statutes requires that birth parents be advised of the availability of kinship adoption agreements. The court based its holding on an analysis of the statute and its legislative history creating kinship adoption agreements. First the court addressed the mother's contention that Welfare and Institutions Code section 366.26 mandates the application of the kinship adoption agreement legislation in dependency proceedings at the permanency planning hearing. The court rejected this argument, stating that Family Code section 8714.7 merely lists the permanency planning hearing of a dependency proceeding as an appropriate time for the kinship adoption agreement legislation to be applied. The court found that dependency was included on this list so a parent could be involved in a kinship adoption agreement even if the court involuntarily terminated his or her rights. The court found that there was nothing in the legislation mandating that a parent be advised of the existence of possible kinship adoption agreements at the permanency planning hearing. The court did not address the issue of whether parent's counsel or social worker might be required to inform the parent of the possibility of a kinship adoption agreement where a reluctant relative might be persuaded to adopt only if a kinship adoption agreement were in place.

In re Matthew P. **(1999) 71 Cal.App. 4th 841 [84 Cal.Rptr.2d 269]. Court of Appeal, Fourth District, Division 3.**

After two children were removed from their foster care home and de facto parents, the juvenile court denied the de facto parents' Welfare and Institutions Code section 388 petition to regain custody and, in a separate proceeding, selected long-term foster care as the children's permanent plan. The children had originally been placed in foster care after the parents had failed to comply with a family maintenance plan. A subsequent petition also alleged physical abuse by the father, neglect by both parents, and the mother's failure to protect the children from the father's abuse. The children lived with the de facto parents and their four children during the bulk of their time in foster care. Originally the children successfully integrated into the de facto parents' family, and the family wanted to keep the children in a long-term foster care capacity. For financial reasons the foster parents were unwilling to adopt or become guardians. When the foster mother experienced complications with her pregnancy, the children were removed from foster care and placed in respite care. While the children were in respite care, the social worker prepared a report critical of the de facto parents' care. The foster parents then filed a Welfare and Institutions Code section 388 motion to have the children returned from respite care.

At the hearing the foster parents objected to the admission of the social worker's report without their having the chance to cross-examine the preparer. The juvenile court denied the request but admitted into evidence a letter from

the foster mother addressing her concerns with the report. The court also admitted new social worker reports recommending that the children not be returned to the de facto parents. The court denied the 388 motion. Shortly thereafter the birth mother filed a section 388 motion, and a hearing on the motion was held simultaneously with the permanency hearing. On the day of the permanency hearing, the social worker filed an updated report, which the de facto parents' attorney was unaware of. The birth mother, social service agency, and the child's attorney stipulated to the social worker's new report, which detailed the de facto parents' problems and recommended continued long-term foster care and increased visitation for the birth mother. The de facto parents' attorney waived his appearance for the permanency planning hearing. When he learned of the new report after lunch on the day of the permanency hearing, he tried to change his waiver of appearance and requested an opportunity to cross-examine the preparer of the report. The court denied this motion.



The de facto parents appealed, contending two principal issues: (1) their section 388 motion should have been granted because they demonstrated changed circumstances and placement with them was in the children's best interest; and (2) they were denied due process at both hearings because they were not allowed to cross-examine the preparer of the social worker reports. The Court of Appeal (1) reversed the denial of the de facto parents' section 388 motion but (2) affirmed the order selecting the permanent plan after finding that the de facto parents' due process rights had not been denied.

On the first issue, the court found that the social worker reports upon which the juvenile court had based its decision to deny the de facto parents' section 388 motion were inadmissible because the juvenile court had not allowed movants to cross-examine the social worker. Preliminarily the court found that the de facto parents' section 388 motion was a proper challenge to the social service agency's decision to leave the children in respite care rather than in long-term foster care with the de facto parents. The court then found that as de facto parents, the foster parents had the right to participate in the proceedings as parties. As such, they were entitled to due process that included cross-examining the preparer of the social worker's reports. The court further found that when deciding if procedural due process is due, the juvenile court must balance enumerated factors. The court specifically noted that in "juvenile dependency litigation, due process focuses on the right to notice and the right to be heard." The appellate court found that under the circumstances of this case, the court should have conducted a full hearing and that the failure to do so caused denial of the de facto parents' right to be heard. Further, the court found that the juvenile court should not have used its discretion under rule 1432(f) of the California Rules of Court to deny the de facto parents the right to be heard.

On the second issue raised by the de facto parents, the appellate court noted that the de facto parents' attorney had waived his appearance at the permanency planning hearing and was unable to convince the juvenile court to let him withdraw his waiver. The appellate court refused to address the issue of whether counsel was "sandbagged." Therefore, the court did not change the order selecting long-term foster care with the foster family as the permanent plan.

In re Zachary D. **(1999) 70 Cal.App. 4th 1392 [83 Cal.Rptr.2d 407]. Court of Appeal, Third District.**

The juvenile court terminated the parental rights of a mother at a Welfare and Institutions Code section 366.26 hearing after the reunification plan failed. The child had been placed with his maternal grandparents, who also had custody of his three siblings. The mother did not attend the section 366.26 hearing, but her attorney urged the court not to terminate parental rights. A kinship adoption agreement was not discussed at this proceeding. The juvenile court terminated parental rights and found that the child was likely to be adopted. The mother appealed, contending that the court committed reversible error in failing to provide her with notice and the opportunity to enter into a kinship adoption agreement with her parents, who were the child's prospective adoptive parents.

The Court of Appeal rejected the mother's contention, holding that although it is desirable to provide notice and an opportunity to be heard on the kinship adoption issue at the section 366.26 hearing, it is not mandatory. The court noted that the Family Code was amended to allow kinship adoption agreements, which allow such things as visitation and contact between the birth parent and child after adoption by a relative. In order for a kinship adoption to take place, the social service agency is required to determine in its report whether such an agreement is in the child's best interest. But the Family Code does not oblige the court to order the social service agency to provide the birth parents or others the opportunity to negotiate a kinship adoption agreement. ■

Delinquency Case Summaries

CASES CURRENT THROUGH NOVEMBER 3 PUBLICATION DATE

In re Carlos B. **76 Cal.App.4th 50 [90 Cal.Rptr.2d 72]. Court of Appeal, Third District.**

The juvenile court sustained charges against a child for transportation of methamphetamines for sale between noncontiguous counties and possession of methamphetamines for sale. After sustaining the charges, the court attempted to transfer the disposition hearing to the juvenile court of the county of the child's residence. However, that court rejected the transfer of the case, so the original court took the disposition and committed the child to the California Youth Authority (CYA). The child contended on appeal that his commitment to CYA must be set aside and the matter remanded to the court of the county of his residence.

In a partially published opinion, the appellate court found that while the court of the county of the child's residence erred by not accepting the case transfer, the original county still maintained jurisdiction over the child to make the CYA commitment. Furthermore, the Court of Appeal found that the child waived any objection to the original court's jurisdiction by his acquiescence at the trial level. The court found that the rules governing transfer are rules 1425 and 1426 of the California Rules of Court. Rule 1425 governs transfer-out hearings and rule 1426 governs transfer-in hearings. Rule 1426 provides that the receiving court may not reject the case, and that if the receiving court believes the child does not reside in the county, its remedy is to appeal or hold a transfer-out hearing pursuant to rule 1425. Based on this, the appellate court found that it was an error for the transferee court to reject the case outright and that this court should have instead either appealed the transfer or held a hearing to transfer the case to the court it believed to be in the county of the child's residence. However, the Court of Appeal found that neither the child nor his counsel voiced any objection when the matter was ordered back to the original court, and the original court accepted and set the matter for disposition and thus waived any objection it may have had. The appellate court found further that the original court never lost jurisdiction because it was never obligated to transfer the case in the first place. Rule 1425(c) provides that the court "may" transfer the case and rule 1425(e) prohibits transfer unless it is in the child's best interest. Both of these provisions imply that transfer is not mandatory. Therefore, the appellate court found that jurisdiction is not dependent on residency but is just one factor to consider in determining jurisdiction. Based on the child's waiver and the rules of court, the appellate court found that the original county court had jurisdiction to dispose of the case.

People v. Garcia **(1999) 21 Cal.4th 1 [980 P.2d 829; 87 Cal.Rptr.2d 114]. Supreme Court of California.**

In an adult criminal proceeding the trial court sentenced a defendant to the middle term of four years for burglary, doubled to eight years under the three-strikes law. The prior strike that the court used to bring the defendant within the provisions of the three-strikes law was a juvenile adjudication for burglary. The defendant appealed, claiming that a juvenile adjudication for burglary could not be used as a strike prior because it is not an offense found in Welfare and Institutions Code section 707(b) (707(b)). The appellate court upheld the trial court's ruling, finding that there was a drafting error in the three-strikes statute and that the prior adjudication must either appear at 707(b) or be listed, as burglary is, as a serious or violent felony. The defendant appealed again, this time to the California Supreme Court, which took up the appeal in order to settle a dispute within the lower courts on how to handle the apparent internal conflict of Penal Code section 667(d)(3) (using a prior juvenile adjudication as a felony conviction for sentencing enhancement).

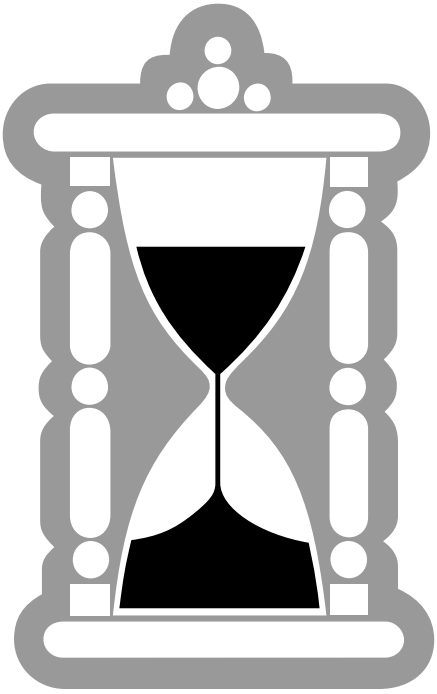
Penal Code section 667(d)(3) provides that a prior juvenile adjudication may be considered a prior felony conviction for sentencing enhancement purposes when (1) the juvenile was 16 or older at the time he or she committed the prior offense; (2) the prior offense is

listed in either 707(b), Penal Code section 667(d)(1), or Penal Code section 667(d)(2) (serious or violent felonies); (3) the juvenile was found to be a fit and proper subject for juvenile law; and (4) the juvenile was adjudged a ward of the court because the juvenile committed an offense within 707(b). The apparent internal conflict is between the second prong (2) and fourth prong (4) of the statute. It appears that the fourth prong requires the prior offense to be found at 707(b), while the second prong allows for serious or violent felonies to be an alternative to the 707(b) list. Under that analysis, if the prior offense is a serious or violent felony not found at 707(b), it would meet the requirement of the second prong. However, that same offense would not qualify under the fourth prong because it is not a 707(b) offense, and therefore the serious or violent felony alternative of the second prong would be given no effect. While all the lower courts treated this as a drafting problem, they handled the problem a number of different ways. Some changed the "or" in the second prong to an "and," thereby limiting the scope of the statute, while others grafted the serious and violent felony language of the second prong onto the fourth prong, thereby expanding the scope of the statute.

The Supreme Court disapproved of both of these methods of handling the statute and found an interpretation that required no redrafting. The Supreme Court found that a prior juvenile adjudication for a non-707(b) offense may be considered a prior felony conviction for the purpose of the three-strikes law if (1) the offense is a serious or violent felony and (2) in the same proceeding that gave rise to the adjudication, the juvenile was adjudged a ward of the court for an offense listed in 707(b), whether or not that offense is the offense used as the prior strike. The court reasoned that this is the most favorable interpretation of the statute because it is the only interpretation that allows the court to follow the fundamental principle of statutory interpretation—that a court should read a statute so as to harmonize and give effect to all its parts if that reading is in line with the statute's language and purpose. The court found that a closer examination of the language of the statute shows that while the first and second prongs use specific language referring to "the prior offense," the fourth prong does not. The fourth prong only makes reference to "an offense" found at 707(b) but says nothing about the "prior offense," and therefore the offense to which the fourth prong refers does not have to be the prior offense used for sentencing enhancement. (The third prong makes no references to offenses.) Thus, the court's interpretation is in line with the language of the statute. The court found that this interpretation was also in accord with the purpose of the statute, which is to allow for longer prison sentences and greater punishment for recidivists.

In a concurring opinion, Justice Baxter pointed out that although he agreed with the conclusion of the lower court, which found that it must have been a drafting oversight to leave out the serious or violent felonies' provision from the fourth prong, he must not upset the constitutional principle of separation of powers by revising statutes. Rather, he found that the revision of the statute should be left to the people and the Legislature and that he was bound to interpret the statute as written.

In a separate opinion, Justice Brown concurred with the result and dissented from the approach. Justice Brown pointed out that the majority interpretation creates an equal protection problem in that it treats juveniles who commit certain 707(b) offenses different from adults who commit the same offenses with no reasonable justification for the difference. A person who was adjudicated a ward of the court for an offense found in 707(b) but not listed as a serious or violent felony (the converse of the case at bar) faces a sentence enhancement problem while a person who commits the same offense as an adult does not. Justice Brown found that this problem violates the rule that a statute should be construed whenever possible to preserve its constitutionality and that the majority cannot avoid this rule by pointing out



that the defendant does not have standing to raise the equal protection argument. Owing to the constitutional problems involved in the majority interpretation, Justice Brown found that the only plausible reading of the statute would be to substitute an "and" for the "or" in the second prong, thereby limiting the scope of the statute while preserving its constitutionality.

***In re Josue S.* (1999) 72 Cal.App.4th 168 [84 Cal.Rptr.2d 796]. Court of Appeal, Second District, Division 5.**

Following a child's no contest plea to vandalism, the juvenile court declared the child a ward of the court and placed him on probation. The offense leading to the child's no contest plea involved an incident where he and another child threw rocks at a car and caused approximately $300 in damage. The probation conditions included (1) warrantless searches, (2) restrictions on travel, and (3) maintenance of satisfactory school grades. The child did not object. Later the child appealed, contending that the juvenile court improperly imposed probation conditions having no reasonable relationship to the facts underlying the wardship order or his personal history.

The Court of Appeal held that the child waived or forfeited objection to the probation conditions by waiting until the appeal to object. As an initial point the court noted that the law is well established in adult proceedings that objections to probation conditions must be raised at the trial level or they are waived. The court further noted that in *People v. Welsh* (1993) 5 Cal.4th 228, 237, the California Supreme Court "specifically disapproved the contrary holding of *In re Jason J.* (1991) 233 Cal.App.3d 710, 714." In the present case, the Second Appellate District, Division Five explicitly disagreed with a holding of Division Four, which had held that *Welsh* was inapplicable to juvenile proceedings. *In re Tanya B.* (1996) 43 Cal.App.4th 1, 5. Division Four had relied on the California Supreme Court case *In re Tyrell J.* (1994) 8 Cal.4th 68, 82. *Tyrell J.* held that probation conditions imposed on children are different from those imposed on adults because the purpose of probation in juvenile proceedings is to ensure the child's reformation and rehabilitation; therefore a child cannot reject probation and its conditions. An adult offender, on the other hand, has the option of rejecting probation in favor of incarceration. Following this reasoning, Division Four held that a juvenile offender could raise objections to probation conditions for the first time on appeal.

In its reasoning Division Five first noted that the Supreme Court had explicitly disapproved the holding of *Jason J.,* which was that a child could challenge the reasonableness of probation conditions for the first time on appeal. The court also noted that, in a series of cases, the Fourth Appellate District had enforced the waiver rule articulated by the Supreme Court in *Welsh*. Specifically the Fourth Appellate District's decision in *In re Abdirahman S.* (1997) 58 Cal.App.4th 963 applied *Welsh* to the juvenile court, reasoning that "the *Welsh* waiver rule is not based on the probationer's consent to the conditions of probation but on the proposition that the probationer did not timely object when problems could have been corrected." Further, it is important to raise the objection at the trial level both to discourage the imposition of invalid probation conditions and to reduce the number of costly appeals brought on that basis. Therefore, Division Five held that *Welsh* applied to the present case. ■

Summaries of Other Child-Related Cases

CASES CURRENT THROUGH AUGUST 10 PUBLICATION DATE

Adoption of Baby Girl B. **(1999) 74 Cal.App.4th 43 [87 Cal.Rptr.2d 569]. Court of Appeal, Fourth District, Division 2.**

The trial court, without holding an evidentiary hearing, denied the petition of a prospective adoptive mother for the adoption of a baby girl. The baby girl was initially placed with the mother by the local county social services agency. The denial was based on the state Department of Social Services (DSS) report stating that the mother had failed to respond to DSS requests for information, was unemployed, had a criminal record, and was living with her ex-husband and son, both of whom had criminal records. The report concluded that the mother's home was not suitable for the baby girl. The mother filed a motion to vacate the order, which was denied by the trial court. The mother appealed, claiming that the denial of the evidentiary hearing was a denial of her and the baby's due process rights as well as the baby's right to equal protection. Furthermore, she claimed that the denial of the motion to vacate the order was an error because (1) DSS failed to give adequate notice of the reasons for and nature of the order it was seeking, (2) the order was due to excusable neglect on the part of the mother, and (3) DSS filed its report in an untimely fashion.

The appellate court found that it was reversible error per se to deny the mother an evidentiary hearing. Although the court found that prospective adoptive parents have a constitutionally protected liberty interest in the care and custody of the child placed with them, the issue was resolved on statutory grounds. The court found that the mother was statutorily entitled to an evidentiary hearing according to Family Code section 8612(a), which requires the court to "examine all persons appearing before it pursuant to this part." The event that triggers the need for an evidentiary hearing is the DSS adverse report, which must be submitted for the court's review according to Family Code section 8822(a). It reasoned that if the court were powerless to grant an adoption without a favorable report from DSS, then there would be no reason to have the court review the report. Since the report must be reviewed at the hearing on the petition for an adoption, the report must be admissible into evidence. The court found that there was no statute analogous to the dependency statutes that provided for the admissibility of social services' reports. DSS would have to call witnesses in order to substantiate the report. Likewise, the court found that the petitioner is not given the opportunity to file any further pleadings or declarations in response to the report and therefore must present witnesses to oppose the report. The lack of provisions in the Family Code allowing for the submission of papers that would give the court the opportunity to rule on the report as if it were a motion leads the appellate court to the conclusion that the Family Code must have contemplated an evidentiary hearing.

The appellate court rejected the DSS claim that because the baby was in imminent danger, necessitating swift action, the trial court could deny the petition for adoption without holding an evidentiary hearing. The appellate court held that the danger to the child must be weighed against the parent's interest in a prior hearing, and that if that must yield to the child's safety interest, the parent is still entitled to a postseparation hearing. The court reasoned that even in the most extreme of situations, where the child is in so much danger that he or she is removed pursuant to the dependency statutes, a petition must be filed within 48 hours and an evidentiary hearing held on the next judicial day. The court held that no matter how serious the danger the baby was in, at some point the mother was entitled to an evidentiary hearing.

The appellate court reversed the order denying the adoption petition and removing the baby from the mother's custody. However, because the child had been in the custody of other caregivers while this appeal was pending (more than one and a half years), the appellate court left the issue of custody to the trial court to decide based on the child's best interest.

In re Marcus G. **(1999) 73 Cal.App. 4th 1008 [87 Cal.Rptr.2d 84]. Court of Appeal, First District, Division 5.**

The juvenile court dismissed the dependency proceedings of a child who was also a ward of the court. The child originally became a dependent of the court when he was four months old. At a six-month status review hearing, almost 15 years into the dependency, the court discovered the child was arrested for robbery. The child was declared a ward of the court. The Department of Human Services (DHS) then petitioned the court to dismiss the dependency proceedings pursuant to Welfare and Institutions Code section 388. DHS submitted a social worker's report along with the petition that recommended termination of the dependency proceedings. The court granted the petition and the child appealed the ruling.

The Court of Appeal found that the juvenile court's handling of the dual jurisdiction problem was not proper. Welfare and Institutions Code section 241.1 sets forth the proper procedure for handling dual jurisdiction problems. As a starting point, the court held that a child could not be both a dependent and a ward of the court according to section 241.1. Once it is determined that there is a dual jurisdiction problem, the child must be assessed by both the probation and the welfare departments of the county according to a jointly written protocol. The two assessments must be submitted to the juvenile court along with the petition that created the dual jurisdiction problem. Notice of the latter proceeding creating the dual jurisdiction problem must be given to the juvenile court that first exercised its jurisdiction over the child. However, the court that created the dual jurisdiction must make the determination of whether the child should be treated as a ward or a dependent. The appellate court determined that the statutory procedure was not followed in this case. The decision to terminate the dependency proceedings was made in the context of the dependency case, not the delinquency proceedings, which were the proceedings that caused the dual jurisdiction problem. There is no record in the delinquency proceedings that wardship status would be a more appropriate status than dependency, and as such the determination was improperly made within the dependency proceedings.

The appellate court held that even assuming that the dual jurisdiction issue was properly a part of the dependency proceedings, the decision was made in reliance on the social worker's assessment alone, which is improper considering that the statute requires a probation assessment as well.

The appellate court reversed the order dismissing the dependency proceedings and remanded the case to the juvenile court to determine if the procedures set forth in section 241.1 were followed within the delinquency proceedings. If the procedures were followed within the delinquency proceedings, then the court could reinstate its order dismissing the dependency; but if the procedures were not followed, then the court would have to order the probation and welfare departments to come into compliance with section 241.1 and submit assessments.

In re Anthony J. **(1999) 72 Cal.App. 4th 1326 [85 Cal.Rptr.2d 783]. Court of Appeal, First District, Division 3.**

The juvenile court found a child guilty of his own lynching under Penal Code section 405a. The child was being arrested by the police and they were successful in handcuffing him. The child struggled with the police and began to yell to a gathering crowd for assistance. As a result of his appeals for help, the crowd grew to about two to three hundred people who eventually rushed the police officers and freed the child. The child ran off, still in handcuffs. He brought this appeal claiming that one cannot be the victim of a lynching and guilty of a lynching at the same time.

The Court of Appeal disagreed with the child and affirmed the juvenile court's ruling. The appellate court found that the "lynching" statute clearly applied to this situation. Penal Code section 405a defines a lynching as the taking of any person from the custody of the police by means of riot. The court held that it was not necessary for the purpose of the riot to have been to exact vengeance upon the person being freed from custody. In order for it to be a lynching, the riot only need be aimed at freeing a person in the custody of the police. Here, the purpose of the riot was to free the child and thus it qualifies as a lynching under Penal Code section 405a. Under Penal Code section 405b, anyone who participates in a lynching may be punished for the lynching. Here, the court found that the child participated in the riot both verbally and physically, and thus the court held that he was punishable under the lynching statute although he was the person freed from custody.

The court also disagreed with the child's argument that the statute is unconstitutionally vague because the statutory definition of lynching deviates from the normal definition of lynching. The court found that the Legislature is free to define crimes and fix punishments as it sees fit and is limited only by the constitutional restriction against cruel and unusual punishment. The court found that the statutory definition was clear on its face and thus not vague.

Finally, the court disagreed that Penal Code section 4534, prohibiting willful assistance in the escape of a person in custody, worked to preclude the application of the lynching statutes in this case. Penal Code section 4534 prohibits any form of willful conduct that effects the escape of a person in custody and is a more general statute. The lynching statutes specifically prohibit riotous conduct aimed at freeing a person in custody. The court reasoned that riotous conduct creates a greater danger to the police and the public at large and therefore may be punished separately from other willful conduct effecting the escape of a person in custody. The court held that the preclusion argument failed.

People v. Fowler **(1999) 72 Cal.App. 4th 581 [84 Cal.Rptr.2d 874]. Court of Appeal, Fifth District.**

In an adult criminal proceeding, a defendant was convicted of engaging in an act of oral copulation while confined in a detention facility. In addition, it was found true that he had suffered two prior serious felony convictions (including a juvenile rape adjudication) and that these fell under the three-strikes law of Penal Code section 667(b)–(i). As noted by the appellate court in the published portion of its opinion, the defendant

appealed, claiming that the three-strikes law is unconstitutional insofar as it allows a prior juvenile adjudication to be used as a strike even though the offender was not afforded a jury trial for the juvenile adjudication.

The Court of Appeal rejected defendant's contention, holding that an express finding of fitness is not required for a juvenile conviction to constitute a strike. The court started by reiterating the well-established distinction between juvenile wardship and adult criminal proceedings and the basis for children not receiving the due process protections afforded to adults, including the right to a jury trial. The court also noted that it is well established that a trial court can consider prior juvenile adjudications in sentencing an adult. Analyzing the three-strikes law, the court noted that applying this law to juvenile adjudications affects only the length of sentence, not the finding of guilt. Therefore, "[s]ince a juvenile constitutionally—and reliably [citation]—can be adjudicated a delinquent without being afforded a jury trial, there is no constitutional impediment to using that juvenile adjudication to increase a defendant's sentence following a later adult conviction."

***People v. Leng* (1999) 71 Cal.App.4th 1 [83 Cal.Rptr.2d 433]. Court of Appeal, Fifth District.**

At sentencing in an adult criminal proceeding, a defendant's prior juvenile adjudication enumerated in Welfare and Institutions Code section 707(b) was not proved to be either serious or violent but was still counted as a "strike" under the three-strikes law. Under Penal Code section 667(d)(3), a prior juvenile adjudication can be counted as a strike if the offense is contained in section 707(b) or is defined as a serious or violent felony by Penal Code section 667.5 or 1192.7. The defendant appealed, contending that the use of a nonserious, nonviolent juvenile adjudication as a second strike was contrary to the intent of the three-strikes law and therefore violated his right to equal protection.

The Court of Appeal agreed that the use of a nonserious, nonviolent juvenile adjudication as a second strike is contrary to the intent of the three-strikes law and is therefore a violation of equal protection. The court first determined that the appropriate standard of review was whether the classification (1) bears a close relation to the promotion of a compelling state interest, (2) is necessary to achieve the government's goal, and (3) is narrowly drawn to achieve the goal by the least restrictive means possible. The court noted that the prosecution did not introduce evidence to prove that the prior adjudication was violent or serious and that had the prior adjudication been in adult court, the prosecution would have had to do so. Therefore, the court held that a juvenile adjudication under section 707(b) may constitute a strike only if it is a serious or violent offense as defined in Penal Code section 667.5 or 1192.7. Since the prosecution had failed at trial to prove that the prior adjudication involved such an offense, the trial court's finding needed to be reversed. The court also held that double jeopardy did not bar retrial of the prior-strike allegation. ■

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